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## HOUSE OF THE PEOPLE

The following report of the Select Committee on the Bill further to amend the Representation of the People Act, 1950, and the Representation of the People Act, 1951, and to make certain consequential amendments in the Government of Part C States Act, 1951, was presented to the House of the People on the 30th November 1953:—

COMPOSITION OF THE SELECT COMMITTEE

Pandit Thakur Das Bhargava—*Chairman*
Shri C. C. Biswas,
Shri Mukund Lal Agrawal,
Shri Ram Shanker Lal,
Shri Piare Lall Kureel 'Talib',
Shri Venkatesh Narayan Tivary,
Shri Hari Vinayak Pataskar,
Shri Bhawanji A. Khimji,
Shrimati Jayashri Raiji,
Shrimati Anasuyabai Kale,
Sardar Amar Singh Saigal,
Shri Krishnacharya Joshi,
Shri Nandlal Joshi,
Shri Gajendra Prasad Sinha,
Shri Lalit Narayan Mishra,
Shri Nageshwar Prasad Sinha,
Shri N. Rachiah,
Shri Lokenath Mishra,
Shri K. T. Achuthan,
Shri S. V. Ramaswamy,

Shri Paidi Lakshmayya,
Shri Tek Chand,
Shri Radha Raman,
Shri Bheekha Bhai,
Shri Muhammed Khuda Bukhsh,
Shri Upendranath Barman,
Shri Bali Ram Das,
Sardar Hukam Singh,
Shri N. C. Chatterjee,
Shri Kamal Kumar Basu,
Shri K. S. Raghavachari,
Shri V. P. Nayar,
Dr. A. Krishnaswami,
Pandit Suresh Chandra Mishra,
Shri Frank Anthony,
Dr. Lanka Sundaram,
Shri Dev Kanta Borooah,
Shri Shankar Shantaram More,
Shri U. M. Trivedi,
Shri Jaswantraj Mehta,
Shri Bhawani Singh,
Shri M. R. Krishna,
Shri R. Velayudhan.

*Secretariat*

Shri N. C. Nandi, Deputy Secretary.
Shri K. G. Bijlani, Under Secretary.

## REPORT OF THE SELECT COMMITTEE

The Select Committee to which the *Bill further to amend the Representation of the People Act, 1950 and the Representation of the People Act, 1951, and to make certain consequential amendments in the Government of Part C States Act, 1951, was referred, have considered the Bill, and I now submit this their Report, with the Bill (as amended by the Committee) annexed hereto.

2. The Select Committee was appointed on a motion adopted by the House on the 4th August, 1953. The original date for the presentation of the Report of the Select Committee was the 22nd August, 1953. Later on this was extended to the last day of the first week of the Fifth Session, and later again up to the 1st December, 1953.

3. Upon the principal changes proposed in the Bill the Select Committee observe as follows:—

4. *Clause* 6.—The Select Committee feel that the proposed section 23 should be amended so as to provide for both preparation

*The Bill was published in Part II, Section 2 of the Gazette of India, dated the 5th March, 1953.

as well as revision of the electoral roll with reference to the qualifying date, and that a specific provision should be made in the section itself relating to the coming into force of the roll. The Committee further feel that powers should be given to the Election Commission to direct a special revision of the electoral roll of a constituency or a part thereof whenever it thinks necessary to do so. The Select Committee have accordingly revised the proposed section 23.

In the opinion of the Select Committee the proposed section 24 should not only provide for the correction of an existing entry in the electoral roll of a constituency, but should also provide for the transposition of an entry from one place in the electoral roll to another place in the same roll. A new sub-section (2) has accordingly been inserted in section 24.

The Select Committee feel that it would be more convenient to the public if applications for inclusion of names in electoral rolls under the proposed section 25 are allowed to be made to the Chief Electoral Officer of the State instead of to the Election Commission in cases where such applications are made after the issue of the writ. The proposed section 25 has been amended accordingly.

5. *Clause* 7.—As the dissolution of the House of the People and of the State Assemblies and as the Parliamentary general elections and Assembly general elections may not take place simultaneously, there may be a transitional period when a Parliamentary constituency might not consist of an integral number of the Assembly Constituencies but a number of Assembly Constituencies plus parts of some other Assembly Constituencies. The proposed section 26 has been amended to make this clear.

6. *Clause* 9.—The Select Committee feel that disqualification as contemplated under this clause should take effect on the expiry of two months from the date on which the Election Commission decides that the return of election expenses had not been lodged within the time and in the manner required by or under this Act. Proposed clause (b) of section 8 has been amended accordingly. The Select Committee also feel that rules should be framed to enable the Election Commission to give notice to the contesting candidates to comply with the "requirements" if the "return" is not properly filled.

7. *Clause* 10 (*New*).—In addition to Returning Officers there will now be Scrutiny Officers. New section 21 has, therefore, been substituted for existing sections 20 and 21.

8. *Clause* 14 (*old clause* 13).—In respect of section 33 of the principal Act the Committee consider that there need not be a 'seconder' to nomination of a candidate. The Committee is also of the opinion that the presentation of nomination paper should be simplified, and it has decided that in sub-section (6) of section 33 of the principal Act the words "or relevant part thereof" should be inserted after the words "electoral roll". The Committee also feel that the provision for an affidavit in the case of nomination of a Scheduled Caste or a Scheduled Tribe candidate should be omitted.

9. *Clause* 17 (*old clauses* 14 *and* 15).—The Committee is of the opinion that in all respects scrutiny of nominations should be finalised before the Elections. For this purpose, the Committee consider that Judicial Officers of at least ten years standing should be the Scrutiny Officers, and that the decisions of these Scrutiny Officers should be appealable to persons nominated by the Chief Justice from amongst the Judges of the High Court of that State, and appointed by the Chief Election Commissioner as "Appellate Authority". It is also considered that this "Appellate Authority" should have the power to issue "certificates" in proper cases so that the matter could be agitated by Election petitions before the Election Tribunals. Accordingly new section 36 has been substituted for the existing section 36, and a new section 36-A substituted for proposed section 36A.

10. *Clause* 21 (*New*).—The Select Committee is of the opinion that the time for which accounts of election expenses should be kept should not be left uncertain as at present but should be made clear beyond doubt. They have, therefore, decided that accounts of election expenses should be kept as from the date of publication of the notification regarding the election. Section 44 has, therefore, been amended suitably.

The Committee also consider that the present 'form' of 'return of election expenses' and rules regarding 'ceiling' require revision.

11. *Clause* 22 (*old clause* 19).—The present section 46 lays down that the notice of appointment of polling agents shall be given in the prescribed manner 'to such Officers as may be prescribed'. This is considered to be causing much difficulty in actual practice. Therefore, in order to simplify the appointment of polling agents, it has been decided to substitute the words "to the returning officer or presiding officer" for the words "in the prescribed manner to such officers as may be prescribed." Section 47 has been suitably amended to enable the candidate or his Election Agent to appoint counting agents even after the commencement of counting the votes.

12. *Clause* 33 (*old clause* 30).—The Committee feel that the Election Commission should have the powers to withdraw and transfer election petitions from Election Tribunals, but the Election Commission should record in writing their reasons for such orders.

13. *Clause* 35 (*old clause* 32).—The Committee feel that in a plural member constituency when the election of one returned candidate is successfully challenged, it should not automatically make void the election of the other successful candidates. Section 100 of Act XLIII of 1951 has, therefore, been suitably amended.

14. *Old Clauses* 34, 37, 39 *and* 40.—The Committee feel that sufficient punishment had already been prescribed for failure to lodge within time a return of election expenses, and they are, therefore, of the opinion that such a failure should not be considered as an illegal practice under section 125. Old clauses 34, 37, 39 and 40 have, therefore, been deleted. It has also been decided that the existing section 143 of the principal Act should be omitted, and that any disqualification for voting incurred by any person under the said section for failure to lodge return of election expenses shall stand removed.

15. *Clause* 41 (*New*).—The Committee feel that the rules framed under the principal Act should be laid on the Table of the House. Accordingly a new sub-section (3) has been inserted in section 169.

16. *Schedule I—entry* 11.—In the provision relating to the qualifying date in the case of every electoral roll, it was decided that "the first day of January" be substituted for "the first day of April" of the year in which the roll was to be prepared.

17. In regard to the question of allotment of symbols to the independent candidates, the Committee feel that the same should be allotted on the date of the scrutiny of nomination papers. The Committee further feel that when there are more than one candidate of a party, there may be some difficulty in the allotment of symbols to them. To obviate this difficulty the Committee have suggested that the Election Commission should frame suitable rules on the matter.

18. The Select Committee is of the opinion that the 'writ' calling an election should in all cases be issued by the Election Commission. It has also been decided that scrutiny of nomination papers by Judicial Officers should be more or less a regular process and not a summary procedure as it is at present. Therefore, section 30 has been suitably amended.

19. The Committee also recommend minor amendments to clauses 2, 5, 12, 18 (old clause 16), 19 (old clause 17), 23 (old clause 20), 29 (old clause 26), 31 (old clause 28) and 34 (old clause 31) of the Bill, and sections 34, 35 and 44 of the principal Act of 1951.

20. The Select Committee recommend that the Bill as now amended be passed by the House.

THAKUR DAS BHARGAVA,
*Chairman of the Select Committee.*

NEW DELHI;
*The 30th November*, 1953.

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## NOTE

When the Representation of the People (Amendment) Bill was sent to the Select Committee some of the Hon. Members had suggested that the provisions relating to the lodging of return of election expenses be done away with. This subject naturally came up for serious discussion before the Committee. This proposal did not however find favour with the Committee and the original proposals in the Bill were kept intact. The proposals on the Bill in regard to declaration were certainly improvements on the present position, in so far as, the obligation on the candidate and his election agent to appear before a magistrate to solemnly affirm that the return of election expenses was true to the best of the knowledge and belief of the candidate and his election agent and that no expenses except the expenses set forth therein were incurred for the purpose of such candidate, was eliminated. Section 44 of the Representation of the People Act enforces an

obligation of keeping separate and regular books of account wherein such particulars of expenditure as may be prescribed to be entered. According to section 7(c) of the Act "a person shall be disqualified for being chosen as and for being a member of the Houses of Parliament or of the Legislative Assembly or Legislative Council of a State if having been nominated as a candidate..... or having as election agent.....has failed to lodge a return of election expenses within the time and manner required by or under this Act unless four years have elapsed from date by which the return ought to have been lodged or the Election Commission has removed the disqualification".

According to rules the return of election expenses is to be filed within 45 days of the publication of the result in the Gazette and within 14 days of such return of election expenses are notified, the election petition is to be filed. The Select Committee have now prescribed the period of 2 months for the election petition to be filed from the date of election.

Under Section 143 of the principal Act an additional penalty of not being allowed to vote for a period of 5 years was attached to the default of not filing the return of election expenses or making a false entry therein. The Select Committee have recommended the omission of this penalty but have agreed to add 135A to the principal Act which was as follows:

"135A. Making false declaration

If a person makes in, or in connection with, any nomination of a candidate for election or any return of election expenses a statement or declaration in writing which is false and which he either knows or believes to be false or does not believe to be true he shall be punishable with imprisonment for a term which may extend to one year or with fine or with both."

The Bill proposes to restrict the operation of Chapter VIII relating to election expenses to certain classes of candidates only. In Chapter VII of the rules provision has been made that the Returning Officer shall certify that the return of election expenses has been made and submit a statement to the Election Commission stating the names of all candidates and their agents with a report whether they have lodged the return within the time and in the manner prescribed. Thereafter the Election Commission will publish a list of such candidates and after considering the report decide whether any candidate or election agent has failed to lodge the return of election expenses within the time and in the manner required by the Act and the rules and the candidate and the election agent have thereby incurred disqualification under clause (c) of section 7 and under section 143. Under the rules the disqualification could be removed by the Election Commission after such inquiry as he thought fit about the question why default was made.

There is no rule which requires or enables a Returning Officer or the Election Commissioner to scrutinise the accounts or find out whether the entries in the return are correct or wrong. They are only concerned that returns are filed in time and in the manner prescribed by the rules. The accounts, separate or regular or joint and

irregular, howsoever kept remain with the candidates and only the returns or excerpts from such accounts entered in the elaborate forms prescribed are filed.

Such returns are open to inspection on payment of nominal fees. At the time of election petition these returns and the accounts if produced can be attached. If any false entry is found it constitutes a minor corrupt practice and an election can be avoided if a corrupt practice has materially affected the result. Thus the only use of these returns and accounts is with reference to the election petition and thus out of the twenty nine thousand or more returns which should have been filed only 320 returns could possibly have been used in the election petitions. If we take away such election petitions as proceeded on the basis of wrong nomination papers the number still become less. Thus in not more than one per cent. cases this return and account could possibly be used.

Now when we remember the undoubted fact that amongst us the habit of keeping accounts is not so well established as in other countries, where literacy is much more, the restriction of keeping separate and regular books of account is felt to be very onerous. If we look at Schedule III of the rules and the ceiling which restricts the expenditure, its forms, it appears that some of them are incapable of being complied with the best of efforts and intentions. It is no wonder therefore that in an excessively large number of cases (in no case, in my humble estimate less than 75 per cent.) the returns do not substantially comply with the requirements of the rules and the law and these returns are notoriously wrong and in many cases false. The requirement of the law that declaration and returns must be lodged with the Returning Officer thus puts too great a strain on the conscience of the members even when they do not lodge deliberately false returns and specially so when such returns and accounts are only useable in only one per cent. of cases. I can well understand the provision about the ceiling as also the obligation of keeping right accounts as they constitute in the opinion of many persons salutary safeguards against excessive expenditure and exercise of corrupt and illegal practices. I can also understand that at the time of the trial of election petition such accounts may be utilised by the petitioner to prove his allegations. I can also fully appreciate the provision of Section 135A which rightly penalise the making of false accounts but what I do not appreciate is that separate and regular account books (which means three sets at least written day by day) are to be kept by each member and the return is to be lodged and declaration made within a prescribed time and manner by each member. Thousands of members against whom no election petition was made or could be made have been disqualified and subsequently proceedings have been taken for removal of their disqualification. In my humble opinion if the ceiling and the obligation to keep accounts are kept as well as the obligation of production of accounts and returns seven days after the election petition has been filed all the advantages of these safeguards will be fully availed of. I do not like that the petitioner should be enabled to bolster up a case in the election petition on the basis of entries in the returns. It can however be enabled to file within a fortnight or ten days of the return being filed his objections to the accuracy of the returns. It can be argued that these provisions will entail some delay in the disposal

of election petition. But in my humble opinion the procedure can very easily be gone into within a short time before the trial of election petition begins which usually does not begin very shortly after the petition is filed.

This compromise between doing away with the provisions entirely and the present position is well worth trying. The proposal combines the ground and salutary effect of the provisions relating to ceiling and keeping true accounts and filing honest returns with the absence of evil concomitant with the obligation of making wrong and false declaration and returns which serve very little purpose. In my humble view the rules and the laws must be such as can be reasonably complied with. If in spirit they are violated and in form they are complied with a situation is created in which self deception is tolerated to a degree which is to say the least is scandalous and in conflict with morality and probity which the Parliament of India are supposed to practice.

I am submitting the note not by way of dissent upon any fundamental point but as an humble suggestion for the honourable members of the House to consider in connection with the law and practice regarding election expenses. If it is accepted section 7 and some rules will have to be amended.

THAKUR DAS BHARGAVA.

NEW DELHI;
*The 30th November,* 1953.

## MINUTES OF DISSENT

### I

I agree to the report submitted by the Select Committee and endorse the provisions of the Bill as amended by the Select Committee, subject to these minutes of dissent.

2. I do not approve of the provision contained in section 36A, sub-section (11). This provision again tries to perpetuate the evil which was to be remedied by the amendment of the Representation of the People Act 1951. In the Statement of Objects and Reasons attached to the Bill as introduced in the House of the People, on page 20, it was mentioned: "A good deal of harassment and anxiety to the candidates and public inconvenience and expenditure can be avoided if suitable provisions are made for appeals before the holding of the elections against the decisions of Returning Officers accepting or rejecting the nomination papers and making the decisions of the appellate authority final." The present provision, instead of remedying by any finality the evil, seeks to create double hardship, a preliminary election petition with all the uncertainty and expenses attached to it are provided hereby. The provision, as it stands, is objectionable on account of its providing for a hearing of a matter by an Election Tribunal after hearing of the same matter by a High Court Judge. The necessity of making such provision is mostly imaginary. Inasmuch as (a) the objections can be raised only by an opposing candidate, and (b) the objection can only relate to the disqualifications or lack of qualifications, the candidate objecting will

certainly be armed with all the evidence beforehand and the candidate meeting the objections will have sufficient time, as now provided, to meet these objections, which will be more or less of documentary and axiomatic type. If, therefore, a provision is made to allow for a subsequent election petition on the same grounds on some excuse as contemplated in this sub-section, it will encourage efforts on the part of candidates to obstruct the progress of the contemplated appeal to put off the evil day or to cause harassment and the efforts of the legislature to remedy the evil, will prove infructuous.

3. I have a further suggestion to make with reference to this clause 36A. Whatever meaning be attached to the word 'Election' as used in the Constitution in article 329(b) all courts have agreed that the decision arrived at about nomination papers after scrutiny of the nomination papers, does come with the purview of 'election' and such election cannot be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate legislature. I, therefore, suggest that to meet any arguments that may arise on the question of the competency of an appeal the word 'appeal' in the heading and the body of the section may be substituted by the words 'preliminary election petition'.

4. Subject to what I have stated above I approve of the report.

U. M. TRIVEDI.

NEW DELHI;
*The 30th November*, 1953.

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II

My note relates to clause 32 of the Bill as recast in clause 35 of the Report.

2. Proviso to sub-section (1) of amended section 100 of the principal Act has been added to rectify the defect that existed before The note to clause 32 in the report portion gives the reason. My contention is that on the very same reasons two other provisos are to be added to sub-section (2) of the amended section.

Thus where a candidate has been declared elected under sub-section (2) of section 54 and the Tribunal declares his election to be void on the ground stated in sub-section 2(a) of section 100 but simultaneously finds that the nomination of another candidate, who was qualified to be chosen to that reserved seat was wrongly rejected, the Tribunal should declare him to be duly elected to that vacant seat.

In fact, but for the wrong finding of the scrutiny officer, such would have been the position. Nobody is wronged if this belated justice is done. To order a fresh election would mean to reopen the general seat also. The administrative machinery will have to be geared up again, at renewed public cost and inconvenience.

3. There is another lacuna. Under the law a reserved seat candidate is entitled to fill the general seat also. So wherever the election

to the reserved seat is declared void under sub-section (2) and/or is not filled in under the proviso suggested above, not only the election to the reserved seat but also to the general seat, if held simultaneously, shall be declared void.

This contingency should be clearly expressed in the sub-section and not left to interpretation of other sections of the Act.

UPENDRA NATH BARMAN.

NEW DELHI;
*The 30th November*, 1953.

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III

I subscribe to the Report of the Select Committee subject to the following observations, which are of fundamental importance to the very system of election law, procedure and practice, under universal adult suffrage in India, and which I have ventured to place for the consideration of my colleagues at various sittings of the Select Committee itself. I feel strongly that the House must give due weight to these considerations before passing the Bill into law.

2. Frankly, there is no disposition on the part of the mover of the Bill or even of the Election Commission to conceal the facts that this amending Bill is being brought before the House as an *ad interim* measure, which is only calculated to assist in elections which are likely to take place on a wide scale in Travancore-Cochin and the PEPSU and that a comprehensive amending Bill will be brought in as soon as it can be got ready. In other words, it is clear that a certain amount of urgency with reference to certain local situations which are likely to arise in this country in the immediate future is at the back of this Bill, and consequently the attention which should have been bestowed upon fundamentals has not, unfortunately, even as I told my colleagues in the Select Committee, been given to them. I am most anxious that nothing should be done even by way of an *ad interim* amending Bill to alter the structure of law and procedure which would once again compel Government to re-revise the law within a short space of time.

3. I regret to say that in order to reckon with certain understandable difficulties, the corpus of the law itself is being tampered with in a manner which is bound to be most dangerous. I will examine this point principally with reference to Clause 17 of the amending Bill as it emerges from the Select Committee.

4. Under the existing Law (section 36 of Act No. XLIII of 1951) election petitions have been filed and contested after the elections were over, leading to one of the following eventualities:

(a) Invalidation of elections;

(b) Unseating of elected candidates;

(c) Vexatious and expensive legal proceedings;

(d) Going through the entire gamut of law from Tribunal to the High Courts and even the Supreme Court; etc.

There is no desire on my part to minimise the reality of the difficulty in regard to these proceedings, whether it be in respect of corrupt practices, or of technical and other points. I agree with the general *intention* of my colleagues to improve the law in such a manner that, as far as possible, legal and quasi-legal processes are not available to contesting candidates and even the electors to upset the declared results of elections. But the remedy now sought is worse than the disease itself.

5. An analysis of the facts relating to the General Elections, for the Parliament, the State Legislatures and the electoral colleges, can be summarised as follows:

| | | |
|---|---|---|
| No. of persons who were nominated as candidates | .. | 27,404 |
| No. of persons who acted as election agents, who were not themselves candidates | .. | 3,187 |
| No. of candidates who incurred disqualifications | .. | 7,671 |
| No. of election agents who incurred disqualifications | .. | 848 |
| No. of candidates whose disqualifications have been removed | .. | 2,411 |
| No. of election agents whose disqualifications have been removed | .. | 212 |
| No. of elected candidates who incurred disqualifications | .. | 204 |
| No. of elected candidates who incurred disqualifications and in whose cases the period mentioned in Section 8(1)(b) was extended beyond two months | .. | 134 |

There are really staggering figures, and, as I have indicated early, I do not wish to minimise the vexatious character of the right of petition at appropriate levels *after the elections are over,* to seek certain remedies which are available under the existing law today, to the candidates, the election agents and even to the electors.

6. But, the remedy, sought with the assistance of clause 17 of the amending Bill, is dangerous in its practical implications. The basic principle of this clause is that the processes available to candidates, agents, and electors after the elections, are now sought to be made available before the polling day. The intention is laudable, but the results ensuing from this provision would be disastrous and cut across the very fundamental approach of elections in a country like India, where the vast majority of the electorate is illiterate and unaccustomed to the democratic way of life, and is fully swayed by *jat-pat* and other considerations to an extent unheard of anywhere in the world.

7. Under the existing law, within three days after the filing of nominations, there is scrutiny and 24 hours after scrutiny the withdrawals take place, leaving a firm card of candidates, who are to go to the polls exactly within five days after the nomination day. Roughly two months to ten weeks is the average time available for

this card of candidates before the polling day, a fact of vital significance especially in respect of parliamentary constituencies (in some cases double member seats) covering vast areas and sometimes three-quarters of a million of voters. Even in the case of Assembly seats—and I have one from my own constituency—as many as nine candidates actually went to the polls for one single seat! Now, under clause 17, the introduction of judicial and quasi-judicial processes seeks fundamentally to alter this position. Between the nomination day and the withdrawal day, there would be two months' time, during which period the vast hordes of people who file their nominations will be before the electorate as potential candidates. It is the experience of every one of us in this House that there are various types of people who file their nominations, and I would like to summarise them as hereunder:

(1) Aspirants who want to test the reactions on a sample basis of the electorate and who hope to get indications of support within 5 days after filing nominations, failing which they withdraw;

(2) Stand-by candidates, particularly for political parties, where there is risk of the scrutiny of the intended candidates going against them; and

(3) Opportunists who file their nominations and strike rich bargains with other candidates withdrawing at the last moment for certain consideration.

*N.B.*—The case of Independents cuts across the above three categories, and will be taken up separately in this Minute for special treatment.

8. I have indicated earlier that even for Assembly seats, as many as nine people in one case have actually contested the elections. As regards candidates who have filed their nominations, there are instances in the South where more than a score of people filed their nominations for a single M.L.A. seat, and there are recorded instances where this number reached the fantastic total of two scores for a single seat. I do not think I am taking the assistance of curiosities of electoral experience to make my point, which is a simple and straight-forward one. A large number of candidates will now go before the electorate for as long a period as two whole months separating the nomination day from the withdrawal day, to enable them under the provisions of clause 17 of the amending Bill to go through the judicial processes which precede the polling day and not follow it. I shudder to think of the terrific complications arising out of this avoidable confusion for our unlettered electorate, which will be faced with the unleashed propaganda of the vast majority of these candidates, and which will centre round not only the propaganda slants of candidates for election, but also a veritable maze of confusion about the election symbols. The point to be noted in this regard is that, even apart from this verbal pandemonium of election propaganda, there will be hardly a fortnight between the withdrawal day and the polling day, with the result that the candidates who finally contest the elections will not have time to properly carry on propaganda *vis-a-vis* the actual contestants to the election.

Corruption will become universal for the reason that, after being present for two months before the electorate, candidates will make rich bargains for withdrawal, a tendency which came into prominence even within the four-day time limit under the existing law. Further, candidates would be locked up in election petitions and prevented from nursing the electorate, owing to frivolous and cantankerous petitions, which cunning and rich opponents contrive to put in only to incapacitate their rivals. This is to be deplored in the interests of fair and free elections.

9. As regards election symbols, I am glad that my plea has been accepted by the Select Committee, that the symbols must be allotted at any rate to the Independents, even with effect from the nomination day itself, and that in the case of recognised political parties, the intended and dummy candidates will continue to be before the electorate between the nomination day and the withdrawal day, and the symbols being assigned to the candidates of these parties who finally stand for election only after withdrawal day. As regards Independents, the problem is solved, to the extent that all the people who stand for election as independent candidates have their symbols assigned to them, though some of the symbols might be wasted when withdrawals take place on the appointed day. In other words, as far as Independents are concerned, the existing list of symbols may have to be widely extended and quite a good number of what may be termed good symbols may be wasted. But as regards party candidates, particularly duplicate or dummy candidates, the complication would be very definite and important. Anyone knowing party organisations and party squabbles would readily appreciate the point that in several cases the stand-by candidates generally feel that they have the affection and support of the electorate more than the intended candidates. Under the existing law, on the fourth day itself—that is to say without sufficient time to know the reactions of the electorate—there was a number of cases all over the country where the stand-by candidates have revolted against party discipline and chose to contest the intended candidates by obtaining symbols which were originally available to Independents. Now, under the new procedure for a period of two full months each party which has been obliged to put, for whatever reason, more than one candidate in the field on the nomination day, will have to do the election campaign in favour of both as alternatives. It does not require much reasoning to demonstrate the point that after two months almost every stand-by candidate—and if not almost everyone of them, at least the vast majority of them—would revolt against party discipline and refuse to withdraw from the fields, thus becoming independent candidates. I cannot over-emphasise the point that the very approach to election which has been our experience during the past 50 years would, under the proposals of Clause 17, be destroyed by (a) a multiplicity of candidates between the nomination day and the withdrawal day, and (b) the risk of party discipline being broken by the stand-by candidates. I feel that the House should have ample opportunity for exercising its mind on this particular question, which has been lost sight of in favour of understandable legal and procedural points when the Select Committee dealt with this clause.

10. To further illustrate the dangerous consequences which are certain to follow from this wide gap between the nomination day

and withdrawal day, during which all legal and quasi-legal processes are to be exhausted. I would take up the position of Independent candidates. The following table supplied to me on request by the Election Commission is illustrative of this point:

*Percentage of Independent Candidates set up during the last General Elections to the total number of candidates.*

| | |
|---|---|
| (1) State Assemblies ... | 39% |
| (2) Parliament ... | 28% |

*Statement showing the total number of Independent Candidates set up and the total number of Independent candidates returned at the elections to the House of the People and Legislative Assemblies in the various States:*

| | No. set up | % to total | No. returned | % to total |
|---|---|---|---|---|
| House of People. | 524 | 28 | 41 | 8·4 |
| State Assemblies. | 5,893 | 38·4 | 326 | 9·9 |

I consider that in the light of experience derived in a number of by-elections all over the country since General Elections were over, and more than everything else, in the light of experience gained in respect of the fortunes of political parties which are these days going through numerous mutations, at once ideological, organisational and personal, it is quite in the cards that the tendency would be for more and more Independents to seek the franchise of the people in the coming elections, whether by-elections or general elections. The fact that a plethora of candidates is before the electorates for two long months between the nomination day and the withdrawal day would, I venture to repeat again, completely alter the structural approach to a highly uneducated electorate which is subject, as I have said, to communal and other passions. This should be avoided at all costs.

11. I would like to repeat here that in an attempt to reckon with the difficulties arising out of curious local positions, both technical and procedural, the corpus of law is being tampered with through the amending Bill. I am dismayed at the fact that most of the provisions of the amending Bill as reported upon by the Select Committee would only become valid in the case of exceptional and difficult situations, and of legal curiosities, but do not in the least assist in the elector, the candidate and the election agent to obtain any rights or reliefs which are denied to them under the existing law. Clause 17 of the amending Bill as emerging from the Select Committee must be dropped if the Government want this Bill passed, and all the considerations I have urged should be borne in mind when the promised consolidated or comprehensive amending Bill is brought before Parliament. Or, alternatively,—and this is the lesser evil—the suggestion which cropped up—technical points to be disposed of under the procedure of clause 17, and the corpus of existing law, i.e., right to petition on fundamentals after elections, retained, should be accepted by the House.

12. It is agreed that, on the basis of experience of the General Elections last year and also of subsequent developments, there is the completest possible confidence expressed by the nation in the integrity of the Election Commission. In fact, I am convinced that

there is hardly any valid complaint made about the manner in which the Election Commission disposed of thousands of references to it, legal, technical and others. But this does not mean that when Parliament passes a law the rule-making power should be entirely vested in the Election Commission. I am glad that my suggestion for the laying on the table of the House the rules framed from time to time by the Election Commission has been accepted by the Select Committee, but I feel I should record here a very important point for the consideration of the House, *viz.* that without a resolution of the House which must have fifteen days' time from the date of such laying, these rules should not be enforced.

13. I would like to state once again that I would have liked at least draft rules might be made available by the Election Commission or the Law Ministry, before finalising this Report. This was not considered possible because of the extremely complicated character of the provisions of the Bill and the rules to be framed thereunder. My alternative proposal was that draft rules framed by the Election Commission might be made available to the House before it disposes of this amending Bill.

14. In the light of the observations made above, particularly in regard to the fundamental changes sought to be made in the electoral system, law procedure etc., it is less than fair to this House to agree to these proposed amendments without knowing in as precise a manner as is possible—or even in draft—the rules to be framed under the provisions of the Amending Bill. It cannot be beyond the resources of the Election Commission to supply drafts of the proposed rules on the clauses of the amending Bill, as instructed by the Select Committee, before the Bill is disposed of by this House. I am persuaded that since there is going to be sufficient time between now and the date on which the Bill is likely to be taken up by the House, an attempt must be made by the Election Commission to submit to the House through the Law Minister drafts of the rules, which I know will be literally legion, for the reason that almost under every clause of the amending Bill new rules are to be framed or old rules are to be altered or otherwise readjusted. The provision for laying on the table of the House *at a future date* all the rules to be framed under this Bill cannot, I regret to say, be considered satisfactory, in the light of the fundamental changes sought to be made in the election system.

15. I consider that the minutes of the meetings of the Select Committee must be made available to the House, as also a list of Government amendments to the original Bill, so that the House would know as to what exactly happened in the Select Committee, and I suggest that these be printed along with the Report of the Committee itself. It is also necessary that the tentative time-table shown to the Select Committee by the Chief Election Commissioner, indicating the manner in which the arrangements are made for elections, must also be published in this manner.

LANKA SUNDARAM.

NEW DELHI:
*The 30th November*, 1953

IV

This Bill has undoubtedly emerged from the Select Committee much improved. I feel, however, that the Select Committee, for many reasons, technical and otherwise, did not go the whole length to improve the Bill still further. We are practically in the first stages of our democracy the future of which much depends on the election law that shapes and regulates the whole electoral system. The last general elections revealed several defects, of more or less gravity, in our election-machinery and the present Bill has been introduced with the obvious object of removing some of these defects. The Bill as improved by the Select Committee will assuredly help to achieve this object.

I substantially agree with the recommendations of the Select Committee but at the same time I am constrained to write this dissenting minute to briefly indicate some of the proposals which, I think would have still further substantially improved the measure if they were not rejected by the majority of the members.

*Clauses* 2, 3 & 6.—By clause 2 section 14 of the principal Act is substituted by a new section. Sub-clause (b) of the proposed section gives the definition of "qualifying date". Clauses 3 and 6 have organic connection with this definition. The said definition gives first day of March of the year "in which an electoral roll is prepared or revised" the "qualifying date". I do not accept this definition to be correct.

Article 326 of the Constitution confers an important right on every adult who "is not less than twenty-one years of age on such date as may be fixed in that behalf by or under any law made by the appropriate legislature". I feel that every person who completes his twenty-first years must be expeditiously "registered as a voter" so as to enable him to exercise his right of suffrage at the following election. Therefore the "qualifying date" and the date on which the preparation or revision of roll is undertaken must not be separated, at the most, by more than thirty days. It is interesting to note that in the United States if a prospective voter will come of age by election day, most States will allow him to be registered for voting.

*Clauses* 5 & 10.—Sub-clause (1) of the proposed new section 21 says that "Chief Electoral Officer" for every State shall be "Officer of Govt.". Similarly, the new section 21 as proposed by clause 10 lays down that the Returning Officer shall also be "an officer of Government". I am of the opinion that even non-officials of sufficient standing and renowned for their honesty and impartiality, if available, may be appointed in these offices.

*Clause* 6.—Section 25, as given in this clause, lays down the procedure for "inclusion of names in the electoral rolls". An application for inclusion of a name is to be made, at any time after the issue of a notification calling upon the Constituency to elect a member or members, to the Chief Electoral Officer and in any other case it is to be made to the Electoral Registration Officer.

I hold the view that this distinction is needless and all such applications should be made to Electoral Registration Officer.

Sub-clause 4 of this section says that appeals against the rejection of such application "shall lie to the Election Commission".

I am of the opinion that this provision, which smacks of too much centralisation, will add unnecessarily to the burden of work of the Election Commission and will be an expensive affair for the appellant and other parties concerned. I think the appeal in such cases should lie to the District Judge who may transfer it to some of his subordinate judges for recording evidence, if necessary, and final hearing. Such a provision will be easy, cheap and expeditious.

*Clauses* 9, 26, 27, 37 & 39.—All these clauses refer to the Return of Election expenses. I am firmly of the opinion that provision regarding submission of Election Expenses should be entirely done away with. The astute and crafty candidates, having a long purse, spend money like water for getting elected. But at the same time, they cleverly manage to cook up of false accounts, fortified with fraudulent vouchers and thus hoodwink everybody including the Election Commission. On the other hand, the honest and truth-loving candidates, their election agents and other supporters find it extremely difficult to comply with the strict and rigid rules and regulations in this respect. In order to avoid the agony of honest people and the frauds and fabrications of the dishonest these provisions which, though salutary and useful in intentions, are much observed in their breach, should be entirely done away with.

This suggestion should not be constructed to convey that the rich candidates should be allowed to defeat a poor candidate by using silver bullets. I want to emphasise that the corrupt practices of bribery, using vehicles for transporting voters etc. should be made serious offences entailing heavy penalties.

*Clause* 14.—(i) Sub-clauses (1) and (2) of the new section 33 under this clause lay down the procedure for filing nomination paper. I do not understand why we should have a proposer and seconder for nominating a candidate. The system is a tame imitation of the English system which is itself a produce of their tradition. Some other Western countries have evolved other methods of nominating candidates. We must simplify the system of filing nomination so as to minimise the possibility of rejection of a nomination paper. The Select Committee has gone some way in this process of simplification. I think we should boldly go still further and hence I suggest the following two additional methods of nomination:

(1) Well-organised Parties are already in the field and recognised both on all India and Statewise basis. Large number of candidates, if not the majority, will be party candidates. The Parties should be allowed to submit the names of their candidates to the Scrutiny Officer concerned and the receipt of such communication should be treated as nomination of the candidates concerned and be given the Party symbol.

(2) A candidate may make a declaration of his intention to stand as a candidate for any constituency and that sole declaration should be accepted as nomination of the candidate.

(ii) In sub-clause 4 the words "disloyalty to the State" occur. Similar expressions also occur in sections 8 and 9 of the principal Act. What is "disloyalty to the State" has not been defined. When a particular Party is in power, views opposed to the Party in power might be construed as "disloyalty to the State" and a man holding such views might come to be dismissed. Such a person, in case he desires to contest any elections, will have to produce a certificate from the Election Commission who will have no other alternative but to accept the verdict of the dismissing authority. I have grounds to fear that these expressions will lead to persecution of persons for holding certain views and opinions unpalatable to a Party in power claiming itself to be the State. I suggest that this expression should be deleted entirely from the Representation of the People Act.

*Clause* 18.—This clause provides for withdrawal by a candidate and lays down the time limit within which such withdrawal is permitted. I think that this provision needs modification. Under sub-clause (2)(a) a candidate gets only three days after the scrutiny to make a proper assessment of his prospects. This time is rather too short to enable a man to take stock of the situation and thus to find out whether he commands any appreciable support of the electorate or not. Under sub-clause (2)(b) a candidate may get longer time but even this time will have to be spent in agitating the validity otherwise of the acceptance or rejection of the nomination paper before the Appellate Authority. It is common experience that many candidates, after touring the constituency extensively, painfully realise that they have a bleak future at the polls and then decide that they had better withdraw. But their practical retirement from the arena is not recognised by law and therefore the whole show of going to the polls has to be staged involving the waste of money and labour by all parties concerned. I, therefore, suggest that withdrawal should be permitted any time before three days of the date of polling; but a withdrawal, after a prescribed time, though permitted, should not entitle the candidate to claim the deposit.

*Clause* 32.—This clause amends section 86 of the principal Act dealing with the appointment of Election Tribunal. Sub-clauses (2) and (3) of this section lay down provisions regarding the composition of the tribunal. It is high time that we substantially modified these provisions. In this respect we shall do well to adopt the U.K. system according to which the jurisdiction relating to election petitions is vested in the Kings Bench Division of the High Court of Justice which has, subject to the Representation of the Peoples Act of 1949, the same powers, jurisdiction and authority in respect of an election petition and all proceedings thereon as it would have if such petition was an ordinary cause within its jurisdiction. Election petitions are tried by two Judges of the Kings Bench Division of the High Court of Justice who are selected from a rota formed for that purpose.

According to section 105 of the Representation of the Peoples Act 1951 "Every order of the Tribunal made under this Act shall be final and conclusive". This provision has proved a fruitful and prolific source of a large number of widely conflicting decisions interpreting the same provision of law in a diametrically opposite manner. I shall not be wrong if I say that there is a universal demand for setting up some appellate authority which will give some uniformity to these

judicial pronouncements. If we adopt the U.K. system there will be automatic provision for appeal to the highest tribunal. The Select Committee by new section 36A under clause 17 has already recognised the necessity and provided for an Appellate Authority to sit in judgment over the decisions of the Scrutiny Officers. The necessity for such an Appellate Authority over the Tribunals decisions in election petitions is more urgent and imperative.

*Clause* 35.—The original section 100 is materially recast by this clause. I was in favour of one more proviso to sub-section 1 of this clause to meet a case as mentioned below.

It may happen that in a particular double-member constituency seats may be contested by several candidates put up by different political parties and also by candidates who are independents. Supposing that two candidates namely candidate A of B Party and candidate C of D Party are declared elected. An election petition is filed in which it is alleged and eventually proved that A—one of the returned candidate has practised group intimidation, bribery or undue influence extensively so as to prevent the elections from being free elections.

Under the provisions recommended by the Select Committee the whole election will be declared void and the returned candidate C of Party D will be unseated though he successfully struggled against the corrupt practices of the returned candidate A and his Party B.

I think in such a case the innocent candidate should not be unseated.

Besides these proposals, I strongly urged some important changes, namely:—

(a) that counting of votes should be commenced immediately after the Polling is over as in United Kingdom and Canada.

(b) that the right of voting is an important right and therefore every voter must be made to exercise that right by making it an obligatory duty.

But I was told that Government intend to bring forward in immediate future a more comprehensive measure regarding our elections when these suggestions can be more appropriately attended to.

S. S. MORE.

NEW DELHI;
*The 30th November,* 1953.

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## V

Whereas the expressed object of the Bill had been to make avoidance of elections rare, the results, I fear, are going to be just the opposite. Though improvements have been made under caption "Avoidance due to improper acceptance or rejection of nominations" holes have been made wider on other counts.

The best way of providing sanctity to elections would have been to add to the powers and prestige of the Election Commission while preserving and nurturing its independence and aloofness. Falling shy of this though it be at the recommendation of the Commission itself, we cannot provide halo of sanctity to elections under quible of legal provisions. We seem to forget that the setting up of a separate semi-judicial independent high-status body for the guidance and control of elections is a feature completely in advance of and novel to the constitution of many countries including the United Kingdom, whose copy our Representation of People Act is. Yet having copied with the U.K., Representation of People Act of 1949 we have grieviously failed and derogated on the point of dealing with Election Petitions. Whereas the U.K. Act provides for the direct dealing of Election Petitions through High Court *via* its rota called the Election Court—like the machinery we are now setting up for the hearing of Nomination appeals—We have provided for the setting up of one separate tribunal for the hearing of every single petition. This becomes the root of all evils. This year we shall be shocked under another heading, but shocked we shall be so long as there is no guidance or control of a High Court and the Supreme Court. As the scheme of things presented is, the Act has become simpler for a questioner—a petitioner. Clause 29 does not provide the necessity of making any officer or official a respondent. The meaning becomes that whereas a questioner can challenge any election on grounds of irregularities and lapses of any official, he need not make the official a party. This leaves the returned candidate to rack his brains in proving the bonafide or the innocence of the official and makes his life a hell of any representative of the people. This should not be so. If it were provided that an official must also be made a respondent if election is to be challenged on grounds of lapses or irregularity of that official, the questioner would be more sober and would not challenge any election on frivolous grounds.

Then section 83 has been completely taken out of the purview of new section 85 or 90 *i.e.* of the Election Commission or the Tribunal, as was provided for in old sections 85 and 90 (see clause 34). We wonder what it has been left there for, in the Act.

*Clause* 35.—Whereas the old section 100 contain a saving proviso in sub-section 3 it has been wiped out by debating its reference in new sub-section (2).

I cannot say whether it is a slip or an intended omission. In order that clause 3 might be operative the proposed clause 2 should read..... Subject to the provisions of sub-section (2A) and of (3), if the Tribunal is of opinion.

In clause 35 (sub-section 2) the words 'materially effected' have not been defined at all. This leaves the whole thing to the caprice of tribunals. This will again prove ruinous.

In short whomsoever the Committee might have been constituted for, it has acted for and on behalf of petitioners, making frivolous setting aside of elections more provable than before.

SURESH CHANDER MISHRA.

NEW DELHI;
*The 30th November*, 1953.

VI

I beg to differ from the decisions of the Select Committee, on two important subjects, covered by their report. They are:—

(i) New Clause 17 replacing section 36, in Act XLIII of 1951 which relates to scrutiny of Nominations.

(ii) Section 76, relating to return of Election Expenses.

The Select Committee have decided that in all respects, a scrutiny of Nomination should be finalised before the Election. Good; but how do they propose to achieve the end? By what method and machinery?

It is proposed that there should be a Scrutiny Officer other than the Returning Officer; he should be a Judicial Officer of at least ten years standing; over and above him, there will be an Appellate authority,—A Judge of High Court, and then again in certified cases, the matter in issue in the appeal shall not be deemed to have been heard and finally decided by him and may be raised again before an Election Tribunal.

In my opinion, such a craze for finality before the Election, which again is not final and the device to attain the end are extremely uncalled for. They also overlook the disadvantages, the objected nomination, if held valid, will be subjected to, and the suspense that will be the lot of all concerned. The method is merely grandiose involving so much expense, both to the candidates and to the State.

Is it not possible to find out any other simpler and more legitimate method to achieve the same end? What, after all is the scope and purpose of the scrutiny, which a Scrutiny Officer is asked to realise? Under clause 17, he may refuse a nomination on any of the following grounds and on no other, namely (a) that the candidate is not qualified to be chosen to fill the seat as either, he is not a citizen of India or is under age or holds an office of profit or is of unsound mind or is an undischarged insolvent, or (b) that he has otherwise incurred some statutory disqualifications. And statutory disqualifications are incurred by (i) violation of Election Laws; (ii) conviction under some penal law; (iii) failing to lodge the Election expenses; (iv) Having some share or interest in a contract with Government; (v) Being a director or managing agent or holding any office of profit under any corporation in which Government has a share or interest; (vi) dismissal for corruption or disloyalty to the State; (c) that the signature of the candidate or the proposer on the nomination paper is not genuine; or (d) that there has been a failure to comply with any of the provisions relating to presentation of a nomination paper and Deposit.

Thus it is clear that except where a nomination is challenged on the allegation that he or she has a share or interest in a contract with the Government or is a Director or managing Agent or holder of an office of profit under any corporation in which Government has a share or interest, all other questions that may come up at the time of scrutiny are matters of already recorded finality and mere production of such documentary evidence should enable any responsible officer to come to a decisive finding on the questions at issue.

The Returning officer may safely be entrusted to arrive at a right and proper decision on them.

The only questions that now remain are (i) whether or not a nominated person holds any office of profit; (ii) whether or not, he or she has a share or interest in a contract with Government; and (iii) whether or not he or she is a Director or a Managing Agent or holder of any office of profit under any corporation in which the Government has a share or interest.

However much these matters may be disputed or bear different interpretations, they are all public matters where Governments are concerned. I think some changes in the law itself, should solve all the difficulties involved, and save the candidates from so much trouble and suspense, deserved or not.

Why can't the law definitely provide that in the event of such persons getting nominated, he or she, holding the office of profit shall be deemed to have resigned the office without notice to Government, having any interest in a contract to have been guilty of breach of contract or having been a Director or Managing Agent or having held the office of profit to have *ipso facto* forfeited the position and the Government shall forthwith give effect to the consequences thereof; or any elector may agitate the matter before a tribunal. In my opinion this will be more appropriate and expeditious. I therefore differ from the decisions of the Select Committee as embodied in clauses 17 and 18 of the amending Bill as amended by the Select Committee. Questions of disqualification should be left over to be decided by the Tribunal alone and in no case should the election be set aside, thereby or annulling the verdict of the people. The sinner, individual should be punished for his own act and thereby be deprived of his own personal benefits that might have accrued to him out of the office or the contract or the position in the corporation. This is not only fair and expeditious but establishes a principle which is more democratic and just.

2. Clause 26 substitutes a new section for section 76 of Act XLIII of 1951 which provides for return of election expenses. In support of the retention of the provision it is argued that in spite of all avoidance of the demands of the law and the rules framed thereunder, and their very presence on the statute book is a warning against dereliction which, when proved, will entail a penalty provided by the law and however rare the contingency be, even a single case leading to the desired result will on the whole be salutory. But when it is forgotten that the law demands too much from a man involved in the game of present-day elections, and that in a contested case, if success has to be kept in view nobody can conscientiously observe the rules and yet win. Section 76 providing for maximum election expenses has nowhere been a deterrent if circumstances demanded that the limit must be transgressed. As a check on the rich it has also failed, because he who has, goes on spending, whatever be the result.

Therefore unless we need only a mental satisfaction of incorporating an abstract principle of high hopes and slippery righteousness, there is no use in demanding in law something which in the nature of things, is hard to attain. If the law really intends that mere

money should not stand in the way of fair elections and that expenses on unlawful matters such as bribery and illegal gratifications should be presented, these ought to be done independent of any action of election expenses which we know is positively unreliable.

The rules already enjoin that on certain accounts and for certain purposes not a pie could be spent. Therefore any such unlawful expense, when proved, will vitiate the election. If still accounts have to be honestly and correctly maintained and expenses must be within the prescribed limit, the Government should keep the accounts and meet the expenses either from the public exchequer or from any amount that the candidate may have to deposit in their favour, respectively. But this is *prima facie* no less an impossibility.

I therefore feel that evils when necessary as bound up with the nature of time and circumstances must be recognised and redressed, if possible, by ways other than a formal return of election expenses, which invite fraud and perjury for no other return. The only honest and honourable course should therefore be to do away with any such provision, instead, conditions should be created so that elections may, indeed, be cheap and fair. This means a radical reform in the structure of our Government, and total transformation of both political and social values. Take one example. Maximum amount of election expenses for a single member Parliamentary Constituency is supposed to be Rs. 25,000. Where is the amount to come from? How many of our people have the means to spend the amount and for what return? A member of the House of the People hardly gets Rs. 25,000 as D.A. or T.A. in course of his 5 years out of which he or she has to meet all the expenses as a member of the House of the People and for his stay in New Delhi. There is hardly any balance left to balance the investment. The line therefore is somewhere else. This line should either be tolerated or removed. A mere return of election expenses is not equal to the task.

And yet there may be a ceiling fixed for election expenses. The ceiling will be there merely as a norm without any legal penalty attached against a transgression. People alone are there to judge the transgressor.

Subject to their note of dissent, I signed the report.

LOKENATH MISHRA.

NEW DELHI;
*The 30th November*, 1953.

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VII

1. The most important change, the amending Bill seeks to affect is the provision for an appeal, *before the date of polling*, against an order accepting or rejecting a nomination paper. Improper rejection of nomination papers has been the cause of a large number of elections being set aside. As many as 71 elected candidates to the House of the People and State Legislative Assemblies and 48 members of the Legislative Councils of Madras and Bihar were unseated

for this reason; while 10 elections involving 14 members for improper acceptance and 8 elections involving 10 members on the ground that the returned candidate was disqualified for being chosen as a member were set aside. The select Committee rightly thought that the question of acceptance or rejection of nomination papers should never be the basis for ordering a re-election.

2. But the remedy they have suggested is beset with difficulties and will be unworkable in practice. They have recommended the setting up of "Scrutiny Officer" from among Judicial Officers of the respective States, before whom a regular judicial enquiry will be held. Provision is made for an appeal to one or more Judges of the High Court and for urging before the Election Tribunal any matter about which the appellate authority has issued a certificate. The feeling that at the last general election some Returning Officers did not take a strictly non-political and non-personal attitude and the fact that in some States such Officers were not higher than Tehsildars, have played a considerable part in making many members take a purely Judicial view of this matter, forgetting that the conduct of an election is *par excellence* an executive affair.

3. The Central pivot of an election is the Returning Officer. He must be clothed with wide discretionary powers to act with speed and expedition; all matters at his level must be centralised in him and he must be saddled with undivided responsibility compelling him to pay his utmost attention to the minutest detail and carry the election through in accordance with the directions with the Election Commission. The creation of new Scrutiny Officers will result in splitting up that concentrated responsibility and lead to grave administrative difficulties if not conflict with the Election Commission. Very many questions arise at once. Is it possible to get a suitable number of Judges of the requisite standing? Are they to sit in their Courts and receive the nomination papers? In the case of local Assembly elections are they to go about the taluk centres to receive them; when are they to intimate the Returning Officers? Where are the notices to be put up? Are the Judicial Officers to suspend their normal work and be itinerating holding enquiries at several centres in the district? The whole scheme, though well meant, is combursome and unworkable.

4. I would therefore retain the present powers and status of the Returning Officers, *who as magistrates, do have Judicial* training I would leave their powers to take quick executive decisions untouched. But as a check against their possible vagaries I suggest the following:—

(a) An appeal shall lie to the District Judge in matters falling under Section 36(2) (c) (d) (e) of the R.P. Act of 1951. A vast majority of the objections will fall under these categories and it is best they are disposed of in the district itself. It will avoid delay and expense of going to the High Court and also the High Court will not be bothered by these minor matters. There will be no further appeal or revision.

(b) Cases falling under Section 36(2) (a) and (b) are more serious in that they involve not merely an interpretation of this Act but also of the Constitution. Cases falling

under these will be few and the High Court can dispose of them in a more satisfactory manner. There will be no further appeal.

(c) The Returning Officer will note in his order the head or heads under which objections are taken, and will briefly state his reasons for accepting or rejecting the objections, so that the aggrieved party may know the forum for appeal. If the appeal lies to the High Court on any one of the objections, then the entire appeal will lie there.

5. I object strongly to the proposal for the issue of any certificate as is envisaged in clause 17(11) of the Bill as it has emerged from the Select Committee. Such a provision will leave a loophole and the very object with which the amending Bill is brought will be defeated. Questions relating to acceptance or non-acceptance of nomination papers must be settled before the polling finally and for ever.

6. It is necessary to define what is meant by "Office of profit". The difficulties that arose over the disqualification of Vindhya Pradesh Assembly Members underlines the urgency for it. A fruitful source of litigation will be avoided if this is done without delay.

7. The scope for election petition will be still further restricted if some time before the elections a list of persons who have contracts with the appropriate Governments and who would be disqualified under section 7(d) of the R.P. Act of 1951 is published in the Official Gazette. It may however be made clear that the list is not exhaustive of persons who will come under its mischief.

8. It is desirable to make the appellate Judicial authority *persona designata*, as Election Judge (of the State concerned) and as district Election Tribunal.

9. The very number of our electors exceeds the population of the U.S.A. The infinitely diverse conditions of communications, climate, language, etc. add to the difficulties of conducting elections on such a vast scale. The conduct of the last general election was beyond reproach, considering the size and novelty of the experiment. The Election Commission has found some difficulties which it wants to avoid. Instead of facilitating it to discharge its onerous responsibilities more speedily the prescribed course will involve friction and delay. I am afraid the suggested remedy is worse than the malady.

10. The other matters are minor ones.

S. V. RAMASWAMY.

NEW DELHI;

*The 30th November*, 1953.

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VIII

This Bill was brought forward by the Government as a result of certain experience derived during the first General Election under the Constitution in our country. We expected that the Government would bring forward a comprehensive legislation based on the experience gained by the Election Commissioner during the last election, whose report, we regret to say, has not yet been finalised and

seen the light of the day. However on the assurance of the Government that a comprehensive legislation will be forthcoming soon and in view of the urgency of making certain amendment resultant on the coming general election in some of the States we accepted the Bill and participated in the discussion of the Select Committee. It will be seen that the Bill has been improved to a great extent in the Committee. Therefore we accept generally the report of the Select Committee yet we are constrained to record that on some points we could not see eye to eye with the majority view. The provision in the amended section 23 for conducting election under the old rolls where revision could not be complete in spite of the statutory provision without any proper safeguard against such delay seems to us to be dangerous, and there may be occasions where the authority concerned may not act properly and with due diligence to complete such revision within the scheduled time. We also associate ourselves with the views expressed by Shri S. S. More in his minute of dissent appended to this Report. However we hope the Government will bring forward in future a more comprehensive legislation wherein the provisions will be simplified so that the common man can actively take a part in such election without being very much bothered about technical intricacies.

K. K. BASU.
V. P. NAYAR.

NEW DELHI;
*The 30th November*, 1953.

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IX

I regret to have to observe that I am not at all happy at the manner in which the Bill, as it has emerged from the Select Committee, seeks to secure the object in view, *viz.* the desirability of finalising the nominations before the elections actually take place. There is not the least doubt that a good deal of harassment and anxiety to candidates and of public inconvenience and expenditure can be avoided if the contingency, inherent in the present law, of an election petition on the ground of improper acceptance or rejection of nomination papers, can be ruled out. But, at the same time, it is up to us to see that the remedy we provide is simple and practicable; and that, at any rate, in trying to mitigate the hardships in one direction we do not create somewhat comparable hardships in other directions.

Yet, this is what exactly we have succeeded in doing; and in spite of our best desire not to do so. For one thing, the machinery we have devised and the procedure we have evolved, is rather too cumbersome and elaborate. At present, we have only two Gods to propitiate as it were namely the Returning Officer at the one end and the Election Tribunal at the other. Now we have interposed two more *viz.* the Scrutiny Officer and the so-called appellate authority. This in itself will mean a lot of expenditure and trouble to all concerned. Secondly as a necessary concomitant of the elaborate machinery and procedure, the time-lag between the filing of the nominations and the actual election has had to be almost doubled, which again means more

expenditure and trouble. And still, with all this additional expenditure and bother, we cannot claim to have achieved in full the object in view, for obviously we have still left a way open for an agitation of the question of valid or invalid acceptance or rejection of nomination papers before the Election Tribunal, on any of the grounds mentioned in Section 36 sub-clause (2), in all those cases in which the appellate authority might think it fit to issue the certificate now proposed to be prescribed.

I would humbly submit that the very fact of our having had to resort to this device of a certificate, betrays a confession that it is not a practicable proposition to secure a finalisation of nominations before the actual election in all cases. That being so, practical wisdom dictates that we would do well to differentiate cases which can be so finalised from those which cannot be finalised, and to leave the latter class of cases to the exclusive jurisdiction of the Election Tribunals. Thus, it is only the former class of cases which we should try to finalise before the elections; and if we concede this position, then we can certainly achieve the object in view by means of a much simpler and quicker procedure.

In this view of the matter, I would suggest for the earnest consideration of the House the advisability of adopting the English practice, and to lay down that so far as grounds (c) (d) and (e) mentioned in sub-clause (2) of Section 36 are concerned these should certainly be finalised before the election but that so far as grounds (a) and (b) are concerned they should be left to the exclusive jurisdiction of Election Tribunals. After all, the English practice embodies the experience of hundreds of years, and there is no reason why we should not avail ourselves of it if it suits our purpose.

If we follow the English model, then as I have suggested we can adopt a simpler procedure for the class of cases involving grounds (c) (d) and (e). The Returning Officer can then continue to be the Scrutiny Officer as at present, though at the same time we could lay down that Returning Officers should so far as practicable be officers with some sort of judicial training. An appeal against the order of the Returning Officer should then lie to the Appellate Authority; and the decision of this authority should be final. And all this can be achieved without the need to increase the time-lag between the nomination and the election; and the agony and additional cost to the candidates and the inconvenience to the public which this increased time-lag necessarily involves.

JASWANTRAJ MEHTA.

NEW DELHI;
*The 30th November,* 1953.

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X

The scope of the Bill has been restricted to a limited number of clauses of the parent Act and as such a comprehensive legislation on the electoral laws of the country could not emerge from the Select Committee. I think the same labour would have been enough to

shape a model law for election as it is very urgent and essential too, for the proper working of representative government. The government itself have admitted that a model election law would be framed by amending the existing ones. The fact is that most of the amended clauses have some relation or other with the unamended ones. which could not be touched by the Select Committee on mere technical reasons.

Sound and simple electoral laws are essential for parliamentary system of government. The existing electoral laws are full of defects and to a great extent they have done great harm to systematic working of democracy in the various States. Rules regarding preparation of electoral rolls, nomination of candidates, qualifications of candidates, machinery set up for conducting elections and election disputes etc. were not properly framed.

The Present amended Bill, in spite of going through the Select Committee has obviously got many drawbacks. I think, the electoral laws were mostly looked at as a piece of "Judicial law" and the result is that in certain points instead of improving matters complications have arisen.

In clause 2, by substituting a new section to the original Act of 1950, the qualifying date is fixed as, "The first day of March of the year in which an electoral roll is prepared or revised". My contention is that a voter, if he attains 21 years of age on the date of election should be given the right to vote. For such a democratic procedure, electoral laws should be revised at least two times a year. Further, legislation should be made in every State allowing the voter to register such names for voting. I understand such system is in vogue in the U.S.A.

In clause 6, in sub-section 5 of section 25, a fixed fee is levied either for correction or revision of the electoral rolls and also for appeal to the Election Commission. I think, no fee should be levied for any kind of representations regarding the above subject. My firm opinion is that, except for Election petition to the Election Tribunal for disputes regarding the election of candidates, no fee either by way of stamps or cash deposit should be levied.

In clause 10, provision is given for a Returning Officer as well as a Scrutiny Officer. The Scrutiny Officer "shall have for at least ten years held judicial office". I feel that in this matter there has been a deviation from the spirit of election to representative bodies on the basis of Parliamentary democracy. I do not understand the new 'Faith' extended in the judicial officials of ten years standing or even to High Court Judges in spite of my respect for the judiciary of the country. If the election procedure regarding electoral rolls and nomination of candidates is simplified to the benefit of the voter, the common man, there will be no need for a Scrutiny Officer at all. I do not think, in any country where such a procedure is prevalent in the scrutiny of nomination papers of candidates contesting elections. A Returning Officer was still recently considered as 'infallible' and was approached by the candidates during the submission of nomination papers with fear and apprehension. I remember I submitted two or three nomination

papers before the same Returning Officer for fear of rejection of one or the other. The remedy suggested to escape from the decisions of the Returning Officer will plunge the candidates in litigation. My submission is that the Returning Officer is enough for scrutiny, but his power should be restricted to the material aspect of laws regarding the candidate's qualifications for nomination as a candidate. Anybody who has attained the age of 21 and who is qualified under the provisions laid down in the constitution regarding candidates should be allowed to contest election. If this principle is accepted the Returning Officer, as for nomination is concerned, exercises only a very limited power and no candidate need bear any fear regarding acceptance or rejection of nomination papers.

Clauses 9, 26 and 37 cover rules regarding the return of election expenses. The provision to fix the maximum for election expenses and to submit return of the election expenses are based on a wrong notion. The rules on the return of expenses were observed more in the breach. Return of the election expenses arose out of the fixation of maximum expenses for election as it is obvious that the law is intended to check the influence of money played in the elections. Candidates who spend or have spent more than the maximum can escape by showing a return which would cover the law. On the other hand, on the pretext of not entering the expenditure in the proper form, many candidates had to suffer, though they spent for their elections only the amount allowed under the law. Thus the law will not serve the objective. It has become a barren law. Why could not then do away with the whole laws regarding the submission of return of election expenses and the maximum fixed?

In clause 14, a proposer is suggested for nominating a candidate. It is thoroughly unnecessary to have this provision in nominating a candidate. Another "judicial procedure" is adopted in this case too. The most simple procedure in this connection will be that a candidate who comes forth with a declaration of intending to stand as a candidate for a constituency should be accepted as sole nomination of the candidate. The words "Disloyalty to the State" still find a place in the amended Bill, as it is used in clause 7, section (f) of the 1951 Act. This refers to Government servants served in the Centre or in the State and who were dismissed. I wonder why such different law is made for the dismissed Government servant. As far as I know, there is no "Loyalty" law enacted for persons entering government job. In the case of others too, there is no such law in existence. Therefore the word "Disloyalty to State" is ambiguous and smells bad of democracy. It is rather strange, why such a word without any legal support behind, either in the constitution or elsewhere is inserted in the clause.

Regarding clause 32, existing arrangements regarding Tribunals need not be changed. It is true that different Tribunals have given different versions of the same electoral laws. But the remedy lies in making faultless laws as far as possible. An appeal to the High Court and then to the Supreme Court is a good procedure. Clause 35 has recast the original section 100. The word "wholly void" is changed into "as a whole to be void". I do not think it is a change at all as both have the same meaning. The difficulty still exists in the case of a double member constituency, if the words "as a whole"

exist. For *e.g.* an election dispute arises in a double member constituency with regard to a general seat. The seat of the reserved candidate will also be declared void, if the tribunal finds that the general seat candidate is guilty. Safeguard is given only in the case of a reserved seat candidate who is returned unopposed. The general seat candidate will also have the same difficulty even if a returned reserved candidate is found guilty under the same clause. Individuals or parties contesting in the double member constituency will have to undergo the same trouble. Under these circumstances the word "as a whole" should be removed and the Tribunal should be given the power to unseat one or the other or both as proved guilty.

Besides the proposals above, I am of the view that counting of votes should be commenced immediately after the polling is over.

R. VELAYUDHAN.

NEW DELHI;
*The 30th November*, 1953.

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XI

During the deliberations in the Select Committee, it appeared to us that some of the important issues need not have been tackled until the Government was ready with a comprehensive amending bill.

2. We generally agree with the Minute of Dissent of Shri S. S. More. On one point we entertain strong views and we endorse the observations made on this matter in the House by Shri Purushottam Das Tandon. The provisions regarding Returns of Election Expenses impose almost impossible burdens on the candidates and their election agents. The Forms of Returns are confusing and it is easy for resourceful or crafty people to secure compliance with the provisions of law by engaging competent men who can prepare accounts. But the same provisions constitute a trap for ordinary people who have neither the resources to engage actuarial assistance or to secure the services of competent men who can keep or prepare necessary accounts. Those who have experience of Election Cases will admit that it is next to impossible in many cases to specify all expenditure incurred and payments made by any person on behalf of the candidate or in the interest of the candidate in connection with the election, as is required by the Form specified in Part K of the Return of Election Expenses. Parliament should not pass any legislation which will compel candidates or members to pledge their oaths to incomplete or incorrect returns of election expenses. If a ceiling of election expenses is insisted on that can be specified. But there is no necessity to fix the maximum number of agents or clerks or messengers.

3. It is certainly desirable to secure finality with regard to nominations before the election actually takes place. Experience has demonstrated that a number of elections has been set aside by Election Tribunals on the ground of improper rejection of nomination papers. Yet we feel that the recommendations of the Select Committee and specially the power to issue certificates given to the

'Appellate Authority' will make the procedure more cumbrous and may lead to harassment and delay. If finality is to be achieved at the earliest stage, then there is hardly any point in allowing the matter to be agitated by election petitions before Election Tribunals after the election.

N. C. CHATTERJEE.
A. KRISHNASWAMI.

NEW DELHI;
*The 30th November*, 1953.

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(AS AMENDED BY THE SELECT COMMITTEE)

(*Words underlined or side-lined indicate the amendments suggested by the Committee; asterisks indicate omissions.*)

BILL NO. 13A OF 1953

*A Bill further to amend the Representation of the People Act*, 1950, *and the Representation of the People Act*, 1951, *and to make certain consequential amendments in the Government of Part C States Act*, 1951.

BE it enacted by Parliament as follows:—

PART I.—PRELIMINARY

**1. Short title and commencement.**—(*1*) This Act may be called the Representation of the People (Amendment) Act, 1953.

(*2*) It shall come into force on such date or dates as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act.

PART II.—AMENDMENTS OF THE REPRESENTATION OF THE PEOPLE ACT, 1950

**2. Substitution of new section for section 14 in Act XLIII of 1950.**—For section 14 of the Representation of the People Act, 1950 (hereafter in this Part referred to as the principal Act), the following section shall be substituted, namely:—

'14. *Definitions.*—In this Part, unless the context otherwise requires,—

(*a*) "constituency" means an Assembly constituency or a Council of States constituency;

(*b*) "qualifying date", in relation to the preparation or revision of every electoral roll under this Part, means the first day of March of the year in which it is so prepared or revised.'.

**3. Substitution of new section for section 19 in Act XLIII of 1950.**—For section 19 of the principal Act, the following section shall be substituted, namely:—

"19. *Conditions of registration.*—Subject to the foregoing provisions of this Part, every person who, on the qualifying date—

(*a*) is not less than 21 years of age, and

(*b*) is ordinarily resident in a constituency,

shall be entitled to be registered in the electoral roll for that constituency.".

**4. Amendment of section 20, Act XLIII of 1950.**—In section 20 of the principal Act, for sub-section (*3*), the following sub-section shall be substituted, namely:—

"(*3*) A member of the Armed Forces of the Union shall be deemed to be ordinarily resident on any date in the constituency in which, but for his service in the Armed Forces, he would have been ordinarily resident on that date.".

**5. Substitution of new section for section 21 in Act XLIII of 1950.**—For section 21 of the principal Act, the following section shall be substituted, namely:—

"21. *Chief Electoral Officers.*—(*1*) There shall be for each State a Chief Electoral Officer who shall be such officer of Government as the Election Commission may, in consultation with that Government, designate or nominate in this behalf.

(*2*) Subject to the superintendence, direction and control of the Election Commission, the Chief Electoral Officer shall supervise the preparation and revision of all electoral rolls in the State under this Act.".

**6. Substitution of new sections for sections 23, 24 and 25 in Act XLIII of 1950.**—(*1*) For sections 23, 24 and 25 of the principal Act, the following sections shall be substituted, namely:—

"23. *Preparation and revision of electoral rolls.*—(*1*) The electoral roll for each constituency shall be prepared in the prescribed manner by reference to the qualifying date and shall come into force immediately upon its final publication in accordance with the rules made under this Act.

(*2*) The said electoral roll shall thereafter be revised in every subsequent year in the prescribed manner by reference to the qualifying date:

Provided that if for any reason the electoral roll is not revised in any year, the validity or continued operation of the electoral roll shall not thereby be affected.

(*3*) Notwithstanding anything contained in sub-section (*2*), the Election Commission may at any time, for reasons to be recorded in writing, direct a special revision of the electoral roll for any constituency or part of a constituency in such manner as it may think fit:

Provided that, subject to the other provisions of this Act, the electoral roll for the constituency, as in force at the time of the issue of any such direction, shall continue to be in force until the completion of the special revision so directed.

24. *Correction of entries in electoral rolls.*—(*1*) The Electoral Registration Officer for a constituency, on application made to him for the correction of an existing entry in the electoral roll of the constituency, shall, if he is satisfied after such enquiry as he thinks fit, that the entry relates to the applicant and is erroneous or defective in any particular, amend the entry accordingly.

(2) Any person whose name is entered in the electoral roll of a Constituency may apply to the Electoral Registration Officer for transposing the entry to another place in the same electoral roll, and if the Electoral Registration Officer, after making such enquiry as he thinks fit, is satisfied that the applicant is entitled to have his name shown in that other place, he shall amend the electoral roll accordingly.

25. *Inclusion of names in electoral rolls.*—(1) Any person whose name is not included in the electoral roll of a constituency may apply in the manner hereinafter provided for the inclusion of his name in that roll.

(2) Where an application under sub-section (1) is made at any time after the issue of a notification calling upon the constituency to elect a member or members and before the completion of that election, it shall be made to the Chief Electoral Officer; and in any other case, it shall be made to the Electoral Registration Officer of the constituency.

(3) The Chief Electoral Officer or, as the case may be, the Electoral Registration Officer shall, if satisfied that the applicant is entitled to be registered in the electoral roll, direct his name to be included therein:

Provided that if the applicant is registered in the electoral roll of any other constituency in the same State, the Chief Electoral Officer or, as the case may be, the Electoral Registration Officer, shall inform the Electoral Registration Officer of that constituency, and that Officer shall, on receipt of the information, strike off the applicant's name from that electoral roll.

(4) Where an application made under this section, is rejected, an appeal shall lie to the Election Commission within such time and in such manner as may be prescribed.

(5) Every application and appeal under this section shall be accompanied by the prescribed fee which shall in no case be refunded.".

(2) For the avoidance of doubt it is hereby declared that sub-rule (2) of rule 20 of the Representation of the People (Preparation of Electoral Rolls) Rules, 1950, shall be deemed to have always been as valid as if its provisions had been enacted in, and had formed part of, section 25 of the principal Act.

**7. Insertion of new section 26 in Part III, and omission of existing section 26 in Part IV in Act XLIII of 1950.**—(1) In Part III of the principal Act, the following section shall be inserted at the end, namely:—

"26. *Electoral rolls for Parliamentary Constituencies.*—(1) The electoral roll for every Parliamentary constituency other than the Parliamentary constituency of the State of Bilaspur shall consist of the electoral rolls of so much of all the Assembly constituencies or, as the case may be, Council of States constituencies as are comprised within that Parliamentary constituency; and it shall not be necessary to prepare or revise separately the electoral roll for any such Parliamentary constituency.

(2) The provisions of sections 14 to 25 (excluding the definition of "constituency" in section 14) shall apply in relation to the Parliamentary constituency of the State of Bilaspur as they apply in relation to Assembly constituencies.".

(2) Section 26 in Part IV of the principal Act shall be omitted.

**8. Insertion of new section 28A in Act XLIII of 1950.**—After section 28 of the principal Act, the following section shall be inserted, namely:—

"28A. *Staff of local authorities to be available.*—Every local authority in a State shall, when so requested by the Election Commission or the Chief Electoral Officer of the State, make available to any Electoral Registration Officer such staff as may be necessary for the performance of any duties in connection with the preparation and revision of electoral rolls.".

PART III.—AMENDMENTS OF THE REPRESENTATION OF THE PEOPLE ACT, 1951

**9. Amendment of section 8, Act XLIII of 1951.**—In sub-section (*1*) of section 8 of the Representation of the People Act, 1951 (hereafter in this Part referred to as the principal Act), for clause (*b*), the following clause shall be substituted, namely:—

"(*b*) a disqualification under clause (*c*) of that section shall take effect on the expiration of two months from the date on which the Election Commission decides that the return of election expenses has not been lodged within the time and in the manner required by or under this Act;".

**10. Substitution of new sections for sections 20 and 21 in Act XLIII of 1951.**—For sections 20 and 21 of the principal Act, the following sections shall be substituted, namely:—

"20. *General duties of Chief Electoral Officers.*—Subject to the superintendence, direction and control of the Election Commission, the Chief Electoral Officer of each State shall supervise the conduct of all elections in the State under this Act.

21. *Returning Officers and Scrutiny Officers.*—For every constituency, for every election (other than a primary election) to fill a seat or seats in the Council of States and for every election by the members of the Legislative Assembly of a State to fill a seat or seats in the Legislative Council of the State, the Election Commission shall, in consultation with the Government of that State, designate or nominate—

(*a*) a Returning Officer who shall be an officer of Government; and

(*b*) a Scrutiny Officer who, being a person in the judicial service of the State, shall have for at least ten years held judicial office:

Provided that nothing in this section shall prevent the Election Commission from designating or nominating the same person to be the Returning Officer or Scrutiny Officer for more than one constituency."

**11. Amendment of section 22, Act XLIII of 1951.**—In section 22 of the principal Act, * the proviso to sub-section (*2*) *** shall be omitted.

**12. Amendment of section 26, Act XLIII of 1951.**—In section 26 of the principal Act, to sub-section (*1*), the following further proviso shall be added, namely:—

"Provided further that nothing in this sub-section shall prevent the Returning Officer from appointing the same person to be the presiding officer for more than one polling station in the same premises."

**13. Substitution of new section for section 30 in Act XLIII of 1951.**—For section 30 of the principal Act, the following section shall be substituted, namely:—

"30. *Appointment of dates for nominations, scrutiny and polling.*—(*1*) As soon as the notification calling upon a constituency to elect a member or members is issued under this Act, the Election Commission shall, by notification in the Official Gazette, appoint—

(*a*) the last date for making nominations, which shall be a date not later than the fourteenth day after the date of publication of the first-mentioned notification and not earlier than the eighth day after the date of publication of the notification under this sub-section; and

(*b*) the date for the commencement of the scrutiny of nominations, which shall be the fourth day after the last date for making nominations.

(2) The Election Commission shall in due course, by another notification in the Official Gazette, appoint the date or dates on which a poll shall, if necessary, be taken, which or the first of which shall be a date not earlier than the thirtieth day, and not later than the sixtieth day, after the date appointed for the commencement of the scrutiny of nominations under clause (*b*) of sub-section (*1*)."

**14. Substitution of new section for section 33 in Act XLIII of 1951.**—For section 33 of the principal Act, the following section shall be substituted, namely:—

"33. *Presentation of nomination paper and requirements for a valid nomination.*—(*1*) On or before the date appointed under clause (*a*) of sub-section (*1*) of section 30 each candidate shall, either in person or by his proposer, between the hours of eleven o'clock in the forenoon and three o'clock in the afternoon deliver to the Scrutiny Officer at the place specified in this behalf in the notice issued under section 31 a nomination paper completed in the prescribed form and signed by the candidate and by an elector of the constituency as proposer.

(2) Any elector of the constituency may sign as proposer as many nomination papers as there are vacancies to be filled but no more:

Provided that if the name of the person is entered more than once in the electoral roll of a constituency or is included in the electoral rolls of two or more constituencies of the same class, such person shall not be entitled to sign as proposer more than one nomination paper for each vacancy to be filled in that constituency or in not more than one of such constituencies of the same class.

(3) In a constituency where any seat is reserved, a candidate shall be deemed to be qualified to be chosen to fill that seat only if the nomination paper contains a declaration by the candidate specifying the particular caste or tribe of which he is a member and the area in relation to which that caste or tribe is a scheduled caste or, as the case may be, a scheduled tribe of the State.

(4) Where the candidate is a person who, having held any office referred to in clause (*f*) of section 7, has been dismissed and a period of five years has not elapsed since the dismissal, such person shall not be deemed to be duly nominated as a candidate unless his nomination paper is accompanied by a certificate issued in the prescribed manner by the Election Commission to the effect that he has not been dismissed for corruption or disloyalty to the State.

(5) Any nomination paper which is not received before three o'clock in the afternoon on the last date appointed under clause (*a*) of sub-section (*1*) of section 30 shall be rejected.

(6) On the presentation of a nomination paper, the Scrutiny Officer shall satisfy himself that the names and electoral roll numbers of the candidate and his proposer as entered in the nomination paper are the same as those entered in the electoral rolls:

Provided that the Scrutiny Officer shall permit any clerical error in the nomination paper in regard to the said names or numbers to be corrected in order to bring them into conformity with the corresponding entries in the electoral rolls; and where necessary, direct that any clerical or printing error in the said entries shall be overlooked:

Provided further that where the candidate is an elector of a different constituency, the electoral roll of which is not available with the Scrutiny Officer, that Officer shall require the person presenting the nomination paper to produce either a copy of that electoral roll or of the relevant part thereof or a certified copy of the relevant entries in such roll.

(7) Nothing in this section shall prevent any candidate from being nominated by more than one nomination paper for election in the same constituency."

**15. Amendment of section 34, Act XLIII of 1951.**—In section 34 of the principal Act, in sub-section (*2*), for the words "Returning Officer" the words "Scrutiny Officer" shall be substituted.

**16. Amendment of section 35, Act XLIII of 1951.**—In section 35 of the principal Act,—

(*a*) for the words "Returning Officer" the words "Scrutiny Officer" shall be substituted;

(*b*) for the words "scrutiny of nominations" the words "commencement of the scrutiny of nominations" shall be substituted; and

(*c*) for the words "the persons who have subscribed the nomination paper as proposer and seconder" the words "the proposer" shall be substituted.

**17. Substitution of new sections for section 36 in Act XLIII of 1951.**—For section 36 of the principal Act, the following sections shall be substituted, namely:—

"36. *Scrutiny of nominations.*—(*1*) The Scrutiny Officer may refuse a nomination on any of the following grounds, and no others, namely:—

(*a*) that the candidate is not qualified to be chosen to fill the seat under the Constitution or this Act or the Government of Part C States Act, 1951 (XLIX of 1951); or

(*b*) that the candidate is disqualified for being chosen to fill the seat under the Constitution or this Act or the Government of Part C States Act, 1951; or

(*c*) that the signature of the candidate or the proposer on the nomination paper is not genuine; or

(*d*) that there has been a failure to comply with any of the provisions of section 33 or section 34:

Provided that—

(*i*) the Scrutiny Officer shall not refuse the nomination of a candidate under clause (*c*) or clause (*d*) because of an irregularity in respect of a nomination paper if the candidate has been duly nominated by means of another nomination paper in respect of which no irregularity has been committed;

(*ii*) for the purposes of clause (*d*), where a person has signed as proposer a larger number of nomination papers than there are vacancies to be filled, his signature shall only be operative on those of the papers which have been first received up to the number of vacancies to be filled and shall be inoperative on the others; and

(*iii*) the Scrutiny Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character.

(*2*) Each candidate, the election agent and one proposer of each candidate and one other person duly authorised by each candidate, but no other person, may attend at the time and place appointed by the Scrutiny Officer for the scrutiny of nominations; and the Scrutiny Officer shall give them all reasonable facilities for examining the nomination papers of all candidates.

(3) On the date fixed for the commencement of the scrutiny of nominations, the Scrutiny Officer shall examine the nomination papers of each candidate, and if no objection is made by or on behalf of any other candidate, shall endorse on each nomination paper his decision accepting or rejecting the same:

Provided that no nomination paper shall be rejected by the Scrutiny Officer on his own motion without giving the candidate or other person attending on his behalf an opportunity to show cause, and in every such case the Scrutiny Officer shall record in writing a brief statement of his reasons for such rejection.

(4) (*a*) Every objection by or on behalf of a candidate to the nomination of another candidate shall be made, either orally or in writing, as soon as the nomination papers of that other candidate are taken up for scrutiny, and if any objection is so made by or on behalf of the candidate concerned and if time is required for replying to the objection, the Scrutiny Officer shall allow time until the next day but one for such reply.

(*b*) If any of the parties requires time for the production of any oral or documentary evidence in support or in rebuttal of any such objection, the Scrutiny Officer shall adjourn the proceedings for the purpose to such date (not later than the sixth day after the date on which the objection was made) as he may think fit.

(*c*) The Scrutiny Officer shall, after taking such evidence as may be produced by the parties and hearing them in regard to the objection, record his decision accepting or rejecting the nomination paper, together with a brief statement of the reasons for his decision.

(5) The Scrutiny Officer shall have the power—

(*a*) to issue summonses to persons for giving evidence or for producing documents;

(*b*) to examine witnesses on oath; and

(*c*) to receive evidence taken on affidavit.

(6) For the purposes of this section, a certified copy of an entry in the electoral roll for the time being in force of a constituency shall be conclusive evidence of the fact that the person referred to in that entry is an elector for that constituency, unless it is proved that he is subject to a disqualification mentioned in section 16 of the Representation of the People Act, 1950 (XLIII of 1950).

(7) The Scrutiny Officer shall complete the scrutiny under this section as expeditiously as possible, and in any event within a period of two weeks from the commencement of that scrutiny, and save as expressly provided in sub-section (4) or as may become unavoidably necessary, shall not allow any adjournment of the proceedings.

(8) Immediately after the scrutiny of nomination papers under the preceding provisions of this section is complete and decisions accepting or rejecting the same have been recorded,

the Scrutiny Officer shall prepare a list of validly nominated candidates, that is to say, candidates whose nominations have been found valid, and affix it to his notice board.

36A. *Appeals from decisions of Scrutiny Officers.*—(*1*) An appeal shall lie to an authority as herein provided from any decision of a Scrutiny Officer accepting or rejecting a nomination paper.

(*2*) The Chief Justice of every High Court shall, at the request of the Election Commission, nominate one or more persons who are judges of that High Court to be the authority or authorities competent to dispose of appeals under this section from the decision of Scrutiny Officers in that State.

(*3*) Where only one appellate authority is so nominated for a State, all appeals from the decisions of Scrutiny Officers in that State shall be presented to, and disposed of by, that authority.

(*4*) Where more appellate authorities than one are nominated for a State, the Chief Justice shall divide the State into as many regions as there are authorities and assign to each authority one such region; and all appeals from the decisions of Scrutiny Officers within that region shall be presented to, and disposed of by, that authority.

(*5*) Any candidate or proposer of a candidate aggrieved by a decision of the Scrutiny Officer accepting or rejecting a nomination may present an appeal therefrom to the appellate authority within a period of five days from the date of the publication of the list of validly nominated candidates under sub-section (*8*) of section 36:

Provided that no such appeal shall lie unless such candidate or proposer has, not later than three o'clock in the afternoon of the day next following the said date, given the Scrutiny Officer notice in writing of his intention to appeal under this section.

(*6*) If one or more notices has or have been received in accordance with the proviso to sub-section (*5*), the Scrutiny Officer shall, immediately after the expiry of the time mentioned in that proviso,—

(*a*) publish the notices by affixing to his notice board one copy of each of the notices, together with an intimation in the prescribed form that the hearing of the appeals, if any, presented in pursuance of those notices will commence before the appellate authority on the tenth day after the date of such publication; and

(*b*) send to the authority having jurisdiction a copy of each of the notices, the intimation referred to in clause (*a*) and the list of validly nominated candidates published under sub-section (*8*) of section 36.

(*7*) The Scrutiny Officer shall, on application made by or on behalf of a candidate, supply forthwith to the applicant a copy of the decision accepting or rejecting a nomination paper together with the statement of reasons, if any, recorded by him under section 36.

(8) In every appeal under this section, the appellant shall join as respondents all the candidates (other than himself) whose nominations have been accepted by the Scrutiny Officer.

(9) The intimation affixed to the notice board of the Scrutiny Officer under clause (a) of sub-section (6) shall be deemed to be sufficient notice, both of the presentation of an appeal under this section and of the date on which the hearing thereof shall commence before the authority and it shall not be necessary to give any other notice to the appellants or the respondents and the appeal or appeals shall be deemed to have been fixed for peremptory hearing on the said date.

(10) Every appeal under this section shall be heard *de die in diem* and disposed of by the appellate authority as expeditiously as possible, and his decision shall be communicated forthwith to the Scrutiny Officer.

(11) While deciding an appeal under this section, the appellate authority may, whether at the instance of any of the parties to the appeal or on his own motion, certify that the matter in issue in the appeal shall not be deemed to have been heard and finally decided by him and may be raised again before an election tribunal in any election petition presented in accordance with the provisions of Part VI after the completion of the election.

(12) Where one or more notices of intention to appeal has or have been given to the Scrutiny Officer but no appeal is presented within the period specified in sub-section (5), the appellate authority shall immediately intimate that fact to the Scrutiny Officer in the prescribed form.

(13) In every case where one or more notices of intention to appeal has or have been given to the Scrutiny Officer, he shall, upon receipt of the communications referred to in sub-sections (10) and (12), republish by affixing to his notice board the list of validly nominated candidates after revising it, if necessary, in conformity with the decisions of the appellate authority.

(14) Save as provided in sub-section (11), the decision of the authority on appeal under this section, and subject only to such decision, the decision of the Scrutiny Officer under section 36, accepting or rejecting the nomination of a candidate, shall be final and conclusive and shall not be called in question in any court or tribunal, including an election tribunal."

**18. Substitution of new section for section 37 in Act XLIII of 1951.**—For section 37 of the principal Act, the following section shall be substituted, namely:—

"37. *Withdrawal of candidature.*—(1) Any candidate may withdraw his candidature by a notice in writing which shall contain such particulars as may be prescribed and shall be signed by him and delivered before three o'clock in the afternoon of the last date for such withdrawal to the Scrutiny Officer either by such candidate in person or by his proposer or election agent who has been authorised in this behalf in writing by such candidate.

(2) The last date for withdrawal of candidatures under this section shall be—

(a) where no notice of appeal has been given in accordance with the proviso to sub-section (5) of section 36A, the third day after the date on which the list of validly nominated candidates is published under sub-section (8) of section 36; and

(b) where such notice of appeal has been given, the third day after the date on which the list of validly nominated candidates is republished under sub-section (13) of section 36A.

(3) No person who has given a notice of withdrawal of his candidature under sub-section (1) shall be allowed to cancel the notice.

(4) The Scrutiny Officer shall, on receiving a notice of withdrawal under sub-section (1), as soon as may be thereafter, cause the notice of withdrawal to be affixed to his notice board."

**19. Substitution of new section for section 38 in Act XLIII of 1951.**—For section 38 of the principal Act, the following section shall be substituted, namely:—

"38. *Preparation and publication of the list of contesting candidates*:—(1) Immediately after the expiry of the period during which candidatures may be withdrawn under section 37, the Scrutiny Officer shall intimate to the Returning Officer the names and such other details as may be prescribed of the candidates who were included in the final list of validly nominated candidates and who have not withdrawn their candidatures within the said period (hereafter in this Act referred to as "the contesting candidates").

(2) The Returning Officer shall then prepare a list of the contesting candidates, setting out their names in alphabetical order and their addresses as given in the nomination papers, together with such other particulars as may be prescribed, and publish it in the prescribed manner."

**20. Substitution of new section for section 40 in Act XLIII of 1951.**—For section 40 of the principal Act, the following section shall be substituted, namely:—

"40. *Election agents*.—(1) There shall be an election agent for every candidate at an election.

(2) A candidate shall be deemed to have appointed himself to be his election agent until and unless he appoints another person to be his election agent.

(3) Every appointment of an election agent shall be made in the prescribed form, signed by the candidate and the election agent, and lodged with the Returning Officer; and it shall be effective only from the date on which it is so lodged.".

**21. Amendment of section 44, in Act XLIII of 1951.**—In section 44 of the principal Act,—

(*a*) after the words "Every election agent" the brackets and words "(including a candidate who is his own election agent)" shall be inserted.

(*b*) after the words "books of account" the words "as from the date of publication of the notification calling the election" shall be inserted.

**22. Substitution of new sections for sections 46 and 47 in Act XLIII of 1951.**—For sections 46 and 47 of the principal Act, the following sections shall be substituted, namely:—

"46. *Appointment of polling agents.*—A contesting candidate or his election agent may appoint in the prescribed manner such number of agents and relief agents as may be prescribed to act as polling agents of such candidate at each polling station provided under section 25 or at the place fixed under sub-section (*1*) of section 29 for the poll.

* * * * *

47. *Appointment of counting agents.*—A contesting candidate or his election agent may, * * * * * appoint in the prescribed manner one or more persons, but not exceeding such number as may be prescribed, to be present as his counting agent or agents at the counting of votes, and when any such appointment is made notice of the appointment shall be given in the prescribed manner to the Returning Officer.".

**23. Insertion of new section 67A in Act XLIII of 1951.**—In Chapter V of Part V of the principal Act, after section 67, the following section shall be inserted, namely:—

"67A. *Date of election of candidate.*—For the purposes of this Act, the date on which a candidate is declared by the Returning Officer under the provisions of section 53, section 54, or section 66, to be elected to a House of Parliament or of the legislature of a State or to an electoral college for a scheduled Part C State shall be the date of election of that candidate."

**24. Amendment of section 68, Act XLIII of 1951.**—In section 68 of the principal Act,—

(*a*) in sub-section (*1*), for the words "within ten days from the date of publication in the Gazette of India of the declarations that he has been so chosen or, if such publications have been made on different dates within ten days from the later of such dates, intimate" the words "within ten days from the date, or the later of the dates, on which he is so chosen, intimate" shall be substituted; and

(*b*) the following sub-section shall be added at the end, namely:—

"(*4*) For the purposes of this section and of section 69, the date on which a person is chosen to be a member of either House of Parliament shall be, in the case of an elected

member, the date of his election and in the case of a nominated member, the date of first publication in the Gazette of India of his nomination.".

**25. Amendment of section 69, Act XLIII of 1951.**—In section 69 of the principal Act,—

(*a*) in sub-section (*1*), for the words "on the publication in the Gazette of India of the declaration that he has been so chosen" the words "on the date on which he is so chosen" shall be substituted; and

(*b*) in sub-section (*2*), for the words "on the publication in the Gazette of India of the declaration that he has been so chosen" the words "on the date on which he is so chosen" shall be substituted.

**26. Substitution of new section for section 76 in Act XLIII of 1951.**—For section 76 of the principal Act, the following section shall be substituted, namely:—

"76. *Return of election expenses.*—(*1*) Within the prescribed time after every election there shall be lodged with the Returning Officer in respect of each contesting candidate a return of election expenses signed by the candidate, and where the candidate has another person as his election agent, also by the election agent.

* * * * *

(*2*) Every return of election expenses shall be in such form and contain such particulars as may be prescribed.".

**27. Substitution of new section for section 78 in Act XLIII of 1951.**—For section 78 of the principal Act, the following section shall be substituted, namely:—

"78. *Application of Chapter.*—This Chapter shall apply only to the following elections, namely:—

(*i*) elections to the House of the People;

(*ii*) primary elections;

(*iii*) elections to the Legislative Assembly of a State; and

(*iv*) elections to the Legislative Council of a State from a Council constituency.".

**28. Amendment of section 81, Act XLIII of 1951.**—In section 81 of the principal Act, in sub-section (*1*), for the words and figures "in such form and within such time but not earlier than the date of publication of the name or names of the returned candidate or candidates at such election under section 67, as may be prescribed" the words "within two months from, but not earlier than, the date of election of the returned candidate, or if there are more than one returned candidate at the election and the dates of their election are different, the later of those two dates" shall be substituted.

**29. Substitution of new section for section 82 in Act XLIII of 1951.**—For section 82 of the principal Act, the following section shall be substituted, namely:—

"82. *Parties to the petition.*—A petitioner shall join as respondents to his petition,—

(*a*) where the petitioner claims a declaration under clause (*b*) of section 84, all the contesting candidates other than the petitioner, and in any other case, all the * returned candidates; and

(*b*) any other candidate against whom allegations of any corrupt or illegal practice are made in the petition.

* * * * *

**30. Substitution of new section for section 83 in Act XLIII of 1951.**—For section 83 of the principal Act, the following section shall be substituted, namely:—

"83. *Contents of petition.*—(*1*) An election petition—

(*a*) shall contain a concise statement of the material facts on which the petitioner relies,

(*b*) shall set forth full particulars of any corrupt or illegal practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt or illegal practice and the date and place of the commission of each such practice, and

(*c*) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (Act V of 1908) for the verification of pleadings.

(*2*) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.".

**31. Substitution of new section for section 85 in Act XLIII of 1951.**—For section 85 of the principal Act, the following section shall be substituted, namely:—

"85. *Procedure on receiving petition.*—(*1*) If the provisions of section 81, section 82 or section 117 have not been complied with, the Election Commission shall dismiss the petition:

Provided that the petition shall not be dismissed without giving the petitioner an opportunity of being heard.

(*2*) If the petition is not dismissed under sub-section (*1*) the Election Commission shall cause a copy thereof to be published in the Official Gazette, and shall also cause a copy to be served by post on each respondent."

* * * * *

**32. Amendment of section 86, Act XLIII of 1951.**—In section 86 of the principal Act, for sub-section (*4*), the following sub-sections shall be substituted, namely:—

"(*4*) If during the course of the trial, the office of the Chairman or any other member of a Tribunal falls vacant owing to death, resignation or otherwise, the Election Commission shall,

as soon as practicable, appoint a person to fill the vacancy in accordance with the provisions of sub-section (*3*) and upon such person joining the Tribunal the trial shall be continued as if he had been on the Tribunal from the commencement of the trial:

Provided that the Tribunal may, if it thinks fit, re-call and re-examine any of the witnesses already examined.

(*4A*) The Tribunal shall have power to act notwithstanding the casual absence of not more than one member; and no act or proceeding of the Tribunal shall be invalid or called in question on the ground merely of such casual absence.".

**33. Insertion of new section 87A in Act XLIII of 1951.**—After section 87 of the principal Act, the following section shall be inserted, namely:—

"87A. *Power of Election Commission to withdraw and transfer petitions.*—The Election Commission may at any stage for reasons to be recorded withdraw any petition pending before a Tribunal and transfer it for trial to another Tribunal constituted in accordance with the provisions of section 86; and upon such transfer, that Tribunal shall proceed with the trial from the point at which it was withdrawn:

Provided that it may, if it thinks fit, re-call and re-examine any of the witnesses already examined.".

**34. Amendment of section 90, Act XLIII of 1951.**—In section 90 of the principal Act,—

(*a*) sub-section (*1*) shall be omitted;

(*b*) sub-sections (*2*) and (*3*) shall be re-numbered as sub-sections (*1*) and (*2*) respectively;

(*c*) for sub-section (*4*), the following sub-sections shall be substituted, namely:—

"(*3*) The Tribunal shall dismiss an election petition which does not comply with the provisions of section 81, section 82 or section 117 notwithstanding that it has not been dismissed by the Election Commission under sub-section (*1*) of section 85.

(*4*) Any candidate not already a respondent shall, upon application made to the Tribunal within fourteen days of the appointment of a Chairman and subject to the provisions of section 119, be entitled to be joined as a respondent.

(*5*) The Tribunal may, upon such terms as to costs and otherwise as it may deem fit, allow the particulars of any corrupt or illegal practice alleged in the petition to be amended or amplified in such manner as may in its opinion be necessary for ensuring a fair and effective trial of the petition, but shall not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt or illegal practice not previously alleged in the petition.".

**35. Amendment of section 100, Act XLIII of 1951.**—In section 100 of the principal Act, for sub-sections (*1*) and (*2*) the following sub-sections shall be substituted, namely:—

"(*1*) If the Tribunal is of opinion that the election has not been a free election by reason that bribery, undue influence or group intimidation has extensively prevailed at the election, the Tribunal shall declare the election as a whole to be void:

Provided that where at the election a candidate has been declared under sub-section (*2*) of section 54 to be elected to fill a reserved seat and the Tribunal is of opinion that bribery, undue influence or group intimidation prevailed only in regard to the election to fill the remaining seat, the Tribunal shall declare to be void only the election of the returned candidate to fill that remaining seat.

*Explanation.*—In this sub-section,—

(*a*) the expressions "bribery" and "undue influence" have the meanings given to them in section 123, and

(*b*) the expression "group intimidation" means any interference or attempt at interference by a community, group or section with the free exercise by another community, group or section of the right to vote or refrain from voting by intimidation, coercion, social or economic boycott, threat of such boycott or other similar means.

(*2*) Subject to the provisions of sub-sections (*2A*) and (*3*), if the Tribunal is of opinion—

(*a*) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act or the Government of Part C States Act, 1951; or

(*b*) that any corrupt practice specified in section 123 has been committed by a returned candidate or his agent or by any other person with the connivance of a returned candidate or his agent; or

(*c*) that the election of a returned candidate has been procured or induced by any corrupt or illegal practice; or

(*d*) that the result of the election, in so far as it concerns a returned candidate, has been materially affected—

(*i*) by the improper acceptance or rejection of any nomination; or

(*ii*) by the improper reception or refusal of any vote or the reception of any vote which is void; or

(*iii*) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act or any other Act or rules relating to the election,

the Tribunal shall declare the election of the returned candidate to be void.

(*2A*) The question whether the result of the election has been materially affected by the improper acceptance or rejec-

tion of any nomination shall not be inquired into and decided by the Tribunal unless the question of the acceptance or rejection of that nomination was a matter in issue in an appeal under section 36A and the authority deciding that appeal has given a certificate under sub-section (*11*) of that section."

**36. Amendment of section 123, Act XLIII of 1951.**—In section 123 of the principal Act, in clause (*b*) of the *Explanation* to clause (*8*), for the words "but shall not include a person (other than any such village officer as aforesaid) who has been declared by the State Government to be a person to whom the provisions of this clause shall not apply" the following shall be substituted, namely:—

"but shall not include—

(*i*) any person (other than such village officer as aforesaid) who has been declared by the State Government to be a person to whom the provisions of this clause shall not apply; and

(*ii*) any such village officer as aforesaid who is a candidate for election to Parliament or the Legislature of the State and is not disqualified for being chosen as a member of Parliament or, as the case may be, of the Legislature of the State.".

* * * *

**37. Insertion of new section 135A in Act XLIII of 1951.**—After section 135 of the principal Act, the following section shall be inserted namely:—

"135A. *Making false declarations.*—If a person makes in, or in connection with, any nomination of a candidate for election or any return of election expenses, a statement or declaration in writing which is false and which he either knows or believes to be false or does not believe to be true he shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.".

**38. Amendment of section 139, Act XLIII of 1951.**—In section 139 of the principal Act, in clause (*b*) of sub-section (*1*), after the word and figures "section 135" the words, figures and letter "or section 135A" shall be inserted.

* * * *

**39. Amendment of section 141, Act XLIII of 1951.**—In section 141 of the principal Act, in clause (*a*), after the word and figures "section 135" the words, figures and letter "or section 135A" shall be inserted.

* * * *

**40. Omission of section 143 in Act XLIII of 1951.**—(*1*) Section 143 of the principal Act shall be omitted.

(*2*) It is hereby declared that any disqualification for voting incurred by any person under the said section for failure to lodge return of election expenses shall stand removed.

**41. Amendment of section 169, Act XLIII of 1951.**—In section 169 of the principal Act, after sub-section (*2*), the following sub-section shall be inserted, namely:—

"(*3*) All rules made under this Act shall, as soon as may be after they are made, be laid before both Houses of Parliament.".

**42. Certain provisions of the Act not to apply to pending elections.**—The amendments made in the principal Act by the provisions of section 10 regarding Scrutiny Officers; and sections 11 to 22, 28 to 31, 34 and 35 and items 19, 21 to 24, 26 to 29 and 31 to 34 of the Schedule shall not apply to any election which, or to any constituency in which any election, is in progress on the date of the coming into force of the said amendments; and any such election shall be held and all matters in connection with any such election (including the decision of disputes regarding the same) shall be regulated in accordance with the provisions of the principal Act in force immediately before such date as amended by the other provisions of this Act.

PART IV.—CONSEQUENTIAL AND MINOR AMENDMENTS

**43. Consequential and minor amendments in Acts XLIII of 1950, XLIII of 1951 and XLIX of 1951.**—The further amendments specified in the Schedule, being amendments consequential upon the foregoing provisions of this Act or relating to matters of minor detail, shall be made in the Representation of the People Act, 1950, the Representation of the People Act, 1951 and the Government of Part C States Act, 1951.

## THE SCHEDULE

(*See* section 43)

I.—AMENDMENTS OF THE REPRESENTATION OF THE PEOPLE ACT, 1950

1. In section 2,—

(*a*) for clause (*b*), the following clause shall be substituted, namely:—

"(*b*) 'Assembly constituency' means a constituency provided by order made under section 9 of this Act or under sub-section (*2*) of section 4 of the Government of Part C States Act, 1951 (XLIX of 1951) for the purpose of election to the Legislative Assembly of a State.";

(*b*) after clause (*h*), the following clause shall be added at the end, namely:—

"(*i*) 'State Government', in relation to a Part C State, means the Lieutenant-Governor or Chief Commissioner thereof.".

2. In section 3A, sub-section (*2*) shall be omitted.

3. In section 8, for the words "a Legislative Assembly" the words "the said Legislative Assemblies" shall be substituted.

4. In section 9, in clause (*a*), after the words "each State" the words "specified in the Second Schedule" shall be inserted.

5. For the heading of Part III, the heading "ELECTORAL ROLLS FOR ASSEMBLY, COUNCIL OF STATES AND PARLIAMENTARY CONSTITUENCIES" shall be substituted.

6. In section 17, after the word "constituency" the words "in the same State" shall be inserted.

7. In section 20,—

(*a*) in sub-section (4), the words "during any period or" and the words "during that period or" shall be omitted;

(*b*) in sub-section (5), the words "during any period or" shall be omitted;

(*c*) in sub-section (6), the words "during any period" and the words "that period" shall be omitted; and

(*d*) sub-section (7) shall be omitted.

8. In section 22,—

(*a*) in sub-section (*1*), after the words "shall be prepared" the words "and revised" shall be inserted; and

(*b*) in sub-section (*2*), after the words "the preparation" the words "and revision" shall be inserted.

9. Section 22A shall be omitted.

10. For the heading of Part IV, the heading "ELECTORAL ROLLS FOR COUNCIL CONSTITUENCIES" shall be substituted.

11. In section 27,—

(*a*) for sub-section (4), the following sub-section shall be substituted, namely:—

"(4) The provisions of sections 15, 16, 18, 20, 21, 22, 23, 24 and 25 shall apply in relation to Council constituencies as they apply in relation to Assembly constituencies";

(*b*) in sub-section (*6*)—

(*i*) for the word "April" the word "January" shall be substituted; and

(*ii*) the words "or revised" shall be added at the end.

12. Section 27F shall be omitted.

13. In section 28, in sub-section (*2*), for clause (*h*), the following clause shall be substituted, namely:—

"(*h*) the *revision of electoral rolls;".

14. The Sixth and Seventh Schedules shall be omitted.

II.—AMENDMENTS OF THE REPRESENTATION OF THE PEOPLE ACT, 1951

15. In section 2,—

(*a*) in sub-section (*1*),—

(*i*) after clause (*b*), the following clause shall be inserted, namely:—

"(*bb*) 'Chief Electoral Officer' means the officer appointed under section 21 of the Representation of the People Act, 1950 (XLIII of 1950).";

(*ii*) for clause (*e*), the following clause shall be substituted, namely:—

"(*e*) 'elector' in relation to a constituency, means a person whose name is entered in the electoral roll of that constituency for the time being in force and who is not subject to any of the disqualifications mentioned in section 16 of the Representation of the People Act, 1950.";

(*iii*) clause (*i*) shall be omitted;

(*iv*) clauses (*j*) and (*k*) shall be re-lettered as clauses (*i*) and (*j*) and after clause (*j*) as so re-lettered, the following clause shall be inserted, namely:—

"(*k*) 'State Government' in relation to a Part C State, means the Lieutenant-Governor or Chief Commissioner thereof.";

(*b*) sub-sections (5) and (7) shall be omitted.

16. In section 8, in sub-section (*1*), clause (*g*) shall be omitted.

17. In section 16, for sub-section (*1*), the following sub-section shall be substituted, namely:—

"(*1*) A general election shall be held for the purpose of constituting in due time the Legislative Assembly of each State under the Constitution or under the Government of Part C States Act, 1951 (XLIX of 1951), as the case may be.".

18. In section 17,—

(*a*) the words "under the Constitution in due time or" shall be omitted;

(*b*) for the words "Governor or Rajpramukh" the words, "Governor, Rajpramukh, Lieutenant-Governor or Chief Commissioner" shall be substituted.

* * * * *

19. In section 31, after the words "a notification under" the words, brackets and figure "sub-section (*1*) of" shall be inserted.

20. To section 32, the words, letter, brackets and figures "or under the provisions of the Government of Part C States Act, 1951 (XLIX of 1951), as the case may be" shall be added at the end.

* * * * *

21. In section 39,—

(*a*) for sub-section (*2*), the following sub-sections shall be substituted, namely:—

"(*2*) As soon as the notification calling upon the elected members or the members of the Legislative Assembly of a State or the members of the electoral college for a Part C

State or group of such States to elect a member or members is issued under this Act, the Election Commission shall, by notification in the Official Gazette, appoint—

(*a*) the last date for making nominations, which shall be a date not later than the fourteenth day after the date of publication of the first-mentioned notification and not earlier than the eighth day after the date of publication of the notification under this sub-section; and

(*b*) the date for the commencement of the scrutiny of nominations, which shall be the fourth day after the last date for making nominations.

(*2A*) The Election Commission shall in due course, by another notification in the Official Gazette, appoint the date or dates on which a poll shall, if necessary, be taken, which or the first of which shall be a date not earlier than the thirtieth day, and not later than the sixtieth day, after the date of publication of the notification under sub-section (*2*)."

(*b*) in sub-section (*4*),—

(*i*) for the brackets, figures and word "(*1*), (*3*), (*4*), (*5*) and (*7*)" the brackets, figures and words "(*1*), (*4*), (*5*), (*6*) (other than the second proviso), and (*7*)" shall be substituted;

(*ii*) in the first proviso, the words "or seconder" shall be omitted;

(*iii*) in the second proviso after the words "electoral roll" the words "or of the relevant part thereof" shall be inserted;

(*iv*) for clause (*b*) of the third proviso the following clause shall be substituted, namely:—

"(*b*) to section 30, and to section 31 shall be construed as references to sub-sections (*2*) and (*2A*) of this section and to sub-section (*3*) of this section respectively".

22. In section 52 for the words "If a candidate who has been duly nominated under this Act dies after the date fixed for the scrutiny of nominations and a report of his death is received by the Returning Officer" the words "If a report of the death of a contesting candidate is received" be substituted.

23. In section 53, for sub-section (*1*), the following sub-section shall be substituted, namely:—

"(*1*) If the number of contesting candidates exceeds the number of seats to be filled, a poll shall be taken.".

24. In section 54, for sub-section (*6*), the following sub-section shall be substituted, namely:—

"(*6*) In this section all references to candidates shall be construed as references to the contesting candidates.".

25. To section 55, the words, letter and figures "or under the Government of Part C States Act, 1951 (XLIX of 1951), as the case may be" shall be added at the end.

26. In section 58,—

(*a*) in sub-section (*1*), the proviso shall be omitted;

(*b*) in sub-section (*2*),—

(*i*) the words "or at any polling booth" shall be omitted;

(*ii*) the words "or in such polling booth, as the case may be" shall be omitted.

(*c*) in sub-section (*3*), the words "or in such polling booth" shall be omitted.

27. In section 84, for clause (*c*) the following clause shall be substituted, namely:—

"(*c*) that the election as a whole is void".

28. In section 97,—

(*a*) in the proviso to sub-section (*1*), for the words and figures "from the date of the publication of the election petition under section 90" the words "from the date of appointment of the Chairman" shall be substituted;

(*b*) in sub-section (*2*), for the words "and list of" the words "together with the" shall be substituted.

29. In section 98, in clause (*d*), for the words "to be wholly void" the words "as a whole to be void" shall be substituted.

30. In section 99, in sub-clause (*ii*) of clause (*a*) of sub-section (*1*), for the figures and word "141 to 143" the figures and word "141 and 142" shall be substituted.

31. In section 119, for the word, brackets and figure "sub-section (*1*)" the word, brackets and figure "sub-section (*4*)" shall be substituted.

32. In section 129, in sub-section (*1*) for the words "Returning Officers" the words "Scrutiny Officers, Returning Officers" shall be substituted.

33. In section 134, in sub-section (*3*) for the words "Returning Officer" the words "Scrutiny Officer, or a Returning Officer" shall be substituted.

34. In section 136, for the words "Returning Officer" wherever they occur the words "Scrutiny Officer or a Returning Officer" shall be substituted.

35. In section 153, in sub-section (*2*), for the words "or Rajpramukh of the State" the words "Rajpramukh, Lieutenant-Governor or Chief Commissioner of the State" shall be substituted.

III.—AMENDMENTS OF THE GOVERNMENT OF PART C STATES ACT, 1951

36. In section 2, sub-section (2) shall be omitted.

37. Section 6 shall be omitted.

38. In section 7,—

(*a*) the word "and" shall be added at the end of clause (*a*); and

(*b*) the word "and" at the end of clause (*b*), the whole of clause (*c*) and the *Explanation* shall be omitted.

39. Section 8 shall be omitted.

40. The First and Second Schedules shall be omitted.

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M. N. KAUL,
*Secretary.*

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